HOUSE OF REPRESENTATIVES—*Friday, September 13, 1985*

The House met at 10 a.m. and was called to order by the Speaker pro tempore [Mr. WRIGHT].

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
September 12, 1985.

I hereby designate the Honorable JIM WRIGHT to act as Speaker pro tempore on Friday, September 13, 1985.

THOMAS P. O'NEILL, JR.,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Gracious God, the world surrounds us with so much activity and there seems to be so little time to reflect and pray. May the noise and pace and rush of daily events not cause us to miss Your presence and to hear Your still, small voice calling us to faithfulness, friendship, service, and peace. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment joint resolutions of the House of the following titles:

H.J. Res. 128. Joint resolution designating the month of October 1985 as "National High-Tech Month"; and

H.J. Res. 299. Joint resolution recognizing the accomplishments over the past 50 years resulting from the passage of the Historic Sites Act of 1935, one of this Nation's landmark preservation laws.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mrs. MEYERS of Kansas) to revise and extend their remarks and include extraneous material:)

Mr. MOLINARI, for 60 minutes, on September 18.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mrs. MEYERS of Kansas) and to include extraneous matter:)

Mr. DREIER of California in one instance.

ADJOURNMENT

Mrs. MEYERS of Kansas. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 10 o'clock and 3 minutes a.m.), under its previous order, the House adjourned until Tuesday, September 17, 1985, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1995. A letter from the Auditor, District of Columbia, transmitting a report entitled: "Review of Transactions Between the University of the District of Columbia and the Office of the Secretary," pursuant to Public Law 93-198, section 455(d); to the Committee on the District of Columbia.

1996. A letter from the Auditor, District of Columbia, transmitting a report entitled: "Outstanding Leins Against Samuel C. Jackson Plaza Project Parcels," pursuant to Public Law 93-198, section 455(d); to the Committee on the District of Columbia.

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. DE LA GARZA: Committee on Agriculture. H.R. 2100. A bill to extend and revise agricultural price support and related programs, to provide for agricultural export, resource conservation, farm credit, and agricultural research and related programs, to continue food assistance to low-income persons, to ensure consumers an abundance of food and fiber at reasonable prices, and for other purposes; with an amendment; referred to the Committee on Merchant Marine and Fisheries for a period ending not later than September 18, 1985, for consideration of such portions of the bill and amendment as fall within its jurisdiction pursuant to clause 1(n) of rule X (Rept. 99-271, pt. 1). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. GONZALEZ:

H.R. 3309. A bill to amend title 10, United States Code, to provide for improved control of excess profits on negotiated defense contracts; to the Committee on Armed Services.

H.R. 3310. A bill to establish the National Commission for Utilization and Expansion of Language Resources; to the Committee on Education and Labor.

H.R. 3311. A bill to establish a program of drug benefits for the aged; to establish a Drug Benefits Council and other appropriate management controls to provide for the efficient administration of such program; and to require the conducting of certain studies and experiments, to enhance the capability of the Secretary of Health and Human Services to administer such program, and for other purposes; to the Committee on Energy and Commerce.

H.R. 3312. A bill to amend the Internal Revenue Code of 1954 to reinstate the deduction for State and local taxes on gasoline and other motor fuels; to the Committee on Ways and Means.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. GONZALEZ introduced a bill (H.R. 3313) for the relief of Maria Consuelo Reyna; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 1759: Mr. BERMAN.

H.R. 2954: Mr. FUSTER, Mr. MITCHELL, Ms. MIKULSKI, and Mr. PENNY.

H.R. 3065: Mr. SMITH of New Hampshire.

H.R. 3186: Mr. BROWN of California, Mr. LEHMAN of Florida, and Mr. GEKAS.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

SENATE—*Friday, September 13, 1985*

(Legislative day of Monday, September 9, 1985)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

*Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind * * *. Thou shalt love thy neighbor as thyself.*—Matthew 22:37, 39.

* * * *Love is the fulling of the law.*—Romans 13:9.

Father in Heaven, there are so many starved for love and affection: children, youth, wives, husbands, parents, neighbors. There are people who never receive a tender, loving touch, a hug, or a gentle word. There are elderly living alone—widows and widowers—who have been shelved, often by their children. They are lonely, forgotten, untouched, starved for love. There are people on the Hill without affection—alone in a crowded office—untouched, unloved, like a robot on the assembly line of office routine. And, Father, despite all the attention they receive—deference wherever they move: press, cameras, lobbyists, constituents, tourists—there are probably Senators who are starved for affection. God of love, at a time when love has been demeaned, degraded, prostituted and reduced to sex, restore true love and its power and feeling, help us to love Thee and one another. Help us not to be afraid to show affection—to express love. In His name, Who is love incarnate. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The distinguished majority leader is recognized.

SCHEDULE

Mr. DOLE. Mr. President, under the standing order the two leaders have 10 minutes each. I reserve the time of myself and also the time of the distinguished minority leader.

That is to be followed by special orders in favor of the distinguished Senator from Wisconsin [Mr. PROXMIRE] and the distinguished Senator from New York [Mr. MOYNIHAN] for not to exceed 15 minutes each, followed by routine morning business not to extend beyond the hour of 10:45 a.m., with statements therein limited to 5 minutes each.

Following routine morning business, the Senate will resume consideration of S. 1200, the immigration bill. Pending is amendment No. 600, the Hawkins amendment. Rollcall votes can be expected throughout the day's session. It is the intention of the majority leader, and I trust the managers of the bill, to complete action on S. 1200 today.

If that is done, then on Monday, as I have indicated, because of the Jewish holiday, there will be no votes. Votes will be postponed until Tuesday, September 17.

On Monday and Tuesday debate and possibly action on the Superfund legislation, S. 51, hopefully under a time agreement, will be completed, and, if not, will be completed on Wednesday.

Next week we will have before us a number of appropriations bills. I will be conferring with the distinguished chairman of the Appropriations Committee, Senator HATFIELD. It is my understanding we can expect to take up the HUD appropriations bill, the D.C. appropriations bill, and possibly next week another bill, Senate Joint Resolution 77, the Compact of Free Association. There is some need to dispose of that legislation in a timely fashion. There is a September 30 deadline.

It is also my hope that perhaps the following week we can spend time on farm legislation. Hopefully, we will have a bill out of the Senate Agriculture Committee by then.

We also, of course, have a series of other legislative items we need to address before October 10, which includes extending the debt ceiling and other important legislation.

Mr. President, I reserve the remainder of my time.

Mr. KENNEDY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER (Mr. TRIBLE). The Senator will state it.

Mr. KENNEDY. Is the immigration bill now before the Senate?

The PRESIDING OFFICER. No.

RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin [Mr. PROXMIRE] is recognized for not to exceed 15 minutes.

STAR WARS DID NOT BRING THE SOVIETS BACK TO THE TABLE

Mr. PROXMIRE. Mr. President, again and again in talking with fellow Senators and Wisconsin constituents, I run into one consistent argument in favor of SDI or star wars. It is that the President's announcement of the Star Wars Program and his fervent support for it has brought the Soviets back to the bargaining table in Geneva. That is the prime argument in favor of star wars and it is as empty as a hot-air balloon. What connection is there between star wars and the presence of the Soviets at the bargaining table in Geneva? Consider the facts.

The facts are that the President's announcement of SDI was made 22 months, almost 2 long years before the Soviets came back to the table. Now, the Soviets may be slow to react. But are they that slow? In fact the President's announcement of SDI was made 9 months before they left the table at Geneva. Ponder that for a minute or two. The advent of star wars was 9 months, three-quarters of a year before the Soviets left the bargaining table at Geneva. Would it not seem far more logical to argue that the star wars announcement drove the Soviets away from negotiations than that it brought them into negotiations. Were they any significant technological breakthroughs for star wars before the Soviets returned to Geneva? Of course not. The program has barely begun. Breakthroughs, even tests that might document breakthroughs, are years away.

Mr. President, this Senator does not argue that SDI does not play a role at the Geneva talks. It does indeed. The Soviets have a concern about SDI, a very real concern. They have conceded that SDI research as such cannot be verified and therefore cannot affectively be prevented by a negotiated agreement. But they do want an agreement to stop testing, production and deployment of this antimissile defense. In fact, they have made this a cardinal tenet of any agreement to reduce offensive nuclear weapons. If SDI will not work, why are the Soviets so anxious to negotiate an end to it? A White House statement of January 3, 1985, that spells out our own; that is, the U.S. concern about a Soviet SDI reveals why the Soviets are anxious to negotiate an end to the American SDI. That White House statement declares that the Soviet Union could break out

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

51-059 O-86-28 (Pt. 17)

of the ABM Treaty and develop a nationwide ABM system in the next 10 years, and continues: "Were they to do so, as they could, deterrence would collapse and we should have no choices between surrender and suicide."

Let me repeat that. The White House said:

Were they to do so, as they could, deterrence would collapse and we should have no choices between surrender and suicide.

Let us take a look in the mirror. That statement drew an interesting picture of the United States psychological reaction to the remote possibility that the Soviets might, just might, sometime develop their own SDI. Is it not logical to expect that the Soviets might suffer the same vision of the collapse of their deterrence and their confrontation with the choice of surrender or suicide? Why not?

Of course, the White House statement is a gross overstatement of the potential threat of a Soviet SDI. The Soviets have a similar gross overestimate of the possibility of an American SDI. Neither side can or will achieve the technological miracle. Either could go broke trying to do so. Meanwhile, the uncertainty and instability, the nightmare threat continues.

Mr. President, I ask unanimous consent that an article entitled "Star Wars: Europe's Polite Waffle," by Wayland Kennet, a former British minister and member of the House of Lords, be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

STAR WARS: EUROPE'S POLITE WAFFLE

(By Wayland Kennet)

Careful reactions in Western Europe to President Reagan's March 1983 "Star Wars" speech began late; there were few in the first year. The idea seemed farfetched; the president had often before been rescued by his staff from off-the-cuff remarks.

At the official level reactions are still not settled, and it is impossible to say what they will be. It would be laborious to catalogue in detail the present official positions: the catalogue would demonstrate, above all, waffle. When governments waffle, other friendly governments should know without being told that they mean: "We don't like and are embarrassed by your idea, but we don't want to say so too loud or too clear." That is what the European NATO governments are saying to the U.S. administration about the Strategic Defense Initiative—except the French who, as usual, have said exactly what they think.

The Reagan Administration, especially the Pentagon, misinterpreted the polite waffle and has gone on to mistake the reasons for which European governments are against SDI, believing that Europeans are worried about not being protected by SDI and that short-range missile defenses will therefore make them quite happy again, or that all Europe wants is a good helping of gravy from the train. This is a false or at least very partial understanding.

The general European attitude is summed up in the four points agreed upon by President Reagan and Prime Minister Thatcher at Camp David a few days before Christmas last year:

"The United States and Western aim is not to achieve superiority, but to maintain balance, taking account of Soviet developments.

"SDI-related deployment would, in view of treaty obligations, have to be a matter for negotiations.

"The overall aim is to enhance, and not to undermine deterrence.

"East/West negotiations should aim to achieve security with reduced levels of offensive systems on both sides. This will be the purpose of the resumed United States/Soviet negotiations on arms control."

These four points have been accepted de facto by all of European NATO as guidelines for further action. They will not be forgotten; any statement that contradicts them will weaken the Alliance, and any action that infringes them will destroy it.

In these points there is no mention of the present research phase, let alone of any support for it. Europeans may support it in the sense of agreeing that it is allowed by the ABM Treaty and that some response to Soviet research is prudent. But such support will only mean governments will refrain from forbidding firms and laboratories from bidding for U.S.-funded contracts.

It would in any case be a mistake to attribute much importance to these attitudes to the research phase. Europeans are inclined to ask one preliminary question about the SDI: what is our opinion about the end to be served by the means which we are invited to help develop? Not only can the end not justify the means, but the means cannot justify the end, and thus should not be allowed to define it. For if the end is wrong, or not known, then the means are also wrong. There is no point in researching how to do something one ought not to do, or which one cannot describe.

Informed political circles in Britain have been skeptical since learning, sometime in April 1983, that President Reagan's SDI speech had been made before consulting his defense secretary or the Joint Chiefs of Staff. We know this because very senior British defense officials were briefed by very senior U.S. defense officials the day before the speech about its contents, and SDI was not part of it.

There is no military demand for SDI in Europe, and before the president spoke there was no military demand for it in the United States. Nor has any military demand for it been made clear since, though some military men are seen to be obeying their commander in chief's orders. We are entirely against the acquisition of arms for which there is no military demand, and one wonders whether the industrial-bureaucratic complex may be becoming even more dangerous than the military-industrial one.

So there have been in Europe embarrassment, concern not to rock the NATO boat and not to make the negotiations in Geneva more difficult, unwillingness to see scarce money for military budgets sidetracked into fantasies, even a feeling not unlike the despondency with which we watched the United States in Vietnam, fighting a war that by definition could not be won. This was a difficult mixture of perceptions to digest.

To our relief, the Reagan-Thatcher four points were identifiably present in the Shultz-Gromyko joint statement of January 8. But then those in the Administration and the Geneva delegations who were attached to the full vision of SDI began to eat Shultz's words—and indeed the president's—and hopes sank.

On March 15 Sir Geoffrey Howe, the British foreign secretary, made a long and careful speech—at the Royal United Services Institute—setting out 15 questions and statements about SDI which the British government believed should be answered as soon as possible, well before the industrial and employment momentum in the United States built up. His 15 points are now as central to European opinion as Prime Minister Thatcher's four points. Each of them can be answered in several ways, but the following answers would probably not provoke very much dissent among informed West Europeans unconnected with the arms industry.

Could the process of moving towards a greater emphasis on active defenses be managed without generating dangerous uncertainty?

No. Imagine the months when one country is drawing toward the completion of an impermeable ABM system. Once it is achieved, it will be able to launch a first strike with impunity. The incitement to its opponent to launch a preemptive first strike at an optimum moment is much increased. The thought that both sides might reach that moment at the same time, thereby removing the incitement to the slower side to consider a preemptive first strike, is politically absurd. Such a simultaneity could only be arranged through detailed and trusting cooperation, which, if it existed, would be better put to achieving disarmament.

Would the establishment of limited defenses increase the threat to civilian populations by stimulating a return to the targeting policies of the 1950s?

Yes. As the number of ICBMs which each side felt sure would get through become lower, each side would have no choice but to rely more and more on countervalue retaliation. Perhaps there is no obvious reason why such a return should be thought a bad thing; the peace was kept in the 1950s by countervalue deterrence as well as in the 1970s by "flexible response." However that may be, the building of an impermeable ICBM shield would produce, late in this history, a balance analogous to that of the 1950s, and which could be produced now by simply reducing the number of ICBMs held by each side.

Would SDI weaponry be "survivable and cost-effective"?

It could possibly be survivable but only until the counterweapons catch up. We are only dealing with another bit of the arms race. And, as already noted, the cost-effective way to keep ICBMs from getting through is to reduce the number of ICBMs in existence.

What would be its psychological impact on the other side?

President Reagan answered this in the least-quoted part of his March 1983 speech: "I clearly realize that defensive systems have limitations and ambiguities. If paired with offensive systems they can be viewed as fostering an aggressive policy." Both superpowers are indeed currently engaged in massive development of offensive strategic weapons; the United States is developing six such systems.

This same point was made with even greater force in a White House statement of January 3, 1985. It states that the Soviet Union could break out of the ABM Treaty and develop a nationwide ABM system in the next 10 years, and continues: "Were they to do so, as they could, deterrence

would collapse and we should have no choices between surrender and suicide."

This is a very adequate account of the "psychological effect on the other side" from the point of view of an American imagining what an effective Soviet SDI would be like. It is strange how seldom such persons understand that the fear they might feel in the future is the fear the Soviets feel now. This argument is well understood by West Europeans who note—as no doubt the U.S. Administration does—that this is in fact the main argument used by the Soviets. This does not by definition make it a bad argument.

What are the chances that there would be no outright winner in the everlasting marathon of the arms race?

Overwhelmingly high. In the mid-1960s the Soviets were all for ABM defenses to cover their whole country, since it was a moral duty to defend one's people. At that time the United States went to great pains to persuade the Soviet Union that major area BMD would be destabilizing, alarming, and so forth. The effort at persuasion succeeded, and the Soviet Union is now playing the U.S. arguments of those days back to their originators. It is like a chess tournament in which the players change colors after each game.

But a wider section of world opinion is watching the match than 20 years ago, so it seems more likely the argument will come to rest, with the Soviets declaring that they would increase the penetration ability of their ICBMs as U.S. defenses built up. These statements give advance warning of a knight's move—the normal Soviet response; the castle and queen move would be to step up ICBM numbers. If President Reagan later breaks the SALT II restrictions, the Soviets will no doubt do that as well: in the arms race, no one is limited to one move at a time.

On this point, European public opinion is well-developed. No less than 84 percent of the British electorate believe that if the United States develops Star Wars the Soviets will follow suit—meaning a continuing arms race. Moreover, 84 percent also believe that the United States will develop Star Wars, whatever the NATO allies say.

How would protection be extended against the non-ballistic missile nuclear threat . . . aircraft, cruise missiles, battlefield nuclear weapons . . . covert action?

Although the presidential slogan remains "to render nuclear weapons impotent and obsolete," there have been no new proposals for defenses against any delivery systems except medium and long-range ballistic ones. If anything more were done, the system would cost even more. As proposed, the system will remain quite incapable of rendering nuclear weapons impotent and obsolete. Locking only one door of the house will not greatly inconvenience the keen burglar.

If it initially proves feasible to construct only limited defenses . . . would the holes in the dike . . . encourage a nuclear flood?

A major but limited system would encourage an increase in nuclear delivery systems and improvement of their penetration ability. Human nature says, "If you can shoot down two out of three, then I must have three times as many to be safe as I was."

Might it not be better to "protect key military installations" by increasing mobility and by submarine deployment?

Yes. It would be cheaper.

Might we find ourselves in a situation where the peace of the world rested solely upon computers and automatic decision-making?

Obviously so. All accounts agree that the earlier in an incoming missile's trajectory an intercept is attempted, the more it must be automatically controlled. The thought of human frailty is alarming, of electronic frailty even more so. But the thought of preprogramed boost-phase intercepts over Soviet territory (or vice versa) is absolutely terrifying.

A question of international law is concealed in this escalation of political terror. At what point in the trajectory of a ballistic missile rising from the territory or a submarine of one country does its intended destination become apparent to its opponent's computers? Not very early, and therefore the SDI envisages that the intercepts should commence before the intended designation is known: if all missiles whatsoever rising from the soil or submarines of the attacking country can be intercepted immediately, the opponent country's programming would be greatly simplified. But the political and strategic effect would be the same as that of destroying missiles on the ground. This ability puts the intended target-country willy-nilly into a first-strike, counterforce posture; and the effect on the originally attacking country can only be like that of a first-strike, counterforce posture as traditionally conceived. To give the impression of aiming to acquire a first-strike, counterforce capability has been considered a bad plan since the Soviet Union interpreted U.S. Defense Secretary Robert McNamara's doctrines that way in 1961 and 1962. That led directly to the Soviets' attempt to place intermediate-range ballistic missiles in Cuba: the last great superpower confrontation.

We shall have to ask ourselves not only whether the West can afford to have active defenses against nuclear missiles. We must also ask whether the enormous funds to be devoted to such systems might be better employed.

The opportunity cost of the arms race has long been one of the main arguments for ending it. The argument in the case of SDI is the same as usual, but the cost in question is greater than usual.

What would be the effect on all the other elements of our defenses, on which Western security will continue in large part to depend?

Either SDI would draw away a lot of money from existing defense arrangements, or the West would spend a lot more money on defense. Both alternatives are profoundly unwelcome to Europeans, who want to keep conventional defense up, as well as to do more to help poorer countries. "Enough is enough" is the view of European electorates.

Could . . . the vision of effective defenses over the horizon provide new incentives to both sides to start at once on reducing their present levels [of nuclear arms]?

Yes, certainly; the vision of each successive upward turn in the arms race could and should have stopped the arms race when it first began. (The fact that successive visions have not stopped it should now be the central concern of political philosophy.) That is true of the possibility, posed in the abstract. But actual threats never bring on cooperation between the threatener and the threatened.

The use of the words "start at once" reminds us of the claim now being made that the threat of SDI brought the Soviets back to the table in Geneva. It might, or it might not have; we shall not know for some time, if ever. To believe it did is to believe the reaction time in Moscow is even slower than we thought. The president's announcement of SDI was made 22 months before the Soviets came back to the table; it was actually made nine months before they even left it.

We should have to be sure the formidable task could actually be managed on a . . . basis [acceptable to both the United States and the Soviet Union].

Since the United States is richer and bears waste more easily than the Soviet Union, the latter consider higher arms levels automatically threatening. The dream of detente at high arms levels is glaringly incompatible with another dream even now to be found in some corners in Washington: that of spending the Soviet Union into the ground. It is certain that if mutual acceptability of strategic postures can be achieved at all it will be at a lower, not a higher, level of armaments.

Sir Geoffrey made this point in the course of saying how important it is that no one should break the ABM Treaty, and in this he speaks for European NATO as a whole. That treaty and SALT I are the only de jure agreements between the superpowers which do something toward meeting their obligations to the rest of the world under the Non-Proliferation Treaty. It is true that the ABM Treaty is only a piece of paper, and that it can be legally denounced with due warning. But the same applies to the North Atlantic Treaty. West European opinion is already aghast at the Reagan Administration's handling of Nicaragua: the mining of the ports, the flouting of the World Court, the charge that Irish terrorists get support from Nicaragua, and so forth. It is unlikely that the Alliance would survive a U.S. rupture of the ABM Treaty.

We must be sure that the United States guarantee to Europe would indeed be enhanced as a result of defensive deployments. Not only enhanced at the end of the process, but from its very inception.

There is of course no written U.S. guarantee to Europe that one can turn to and ask whether the force of these words would be strengthened or weakened by the proposed course of action. The guarantee is implicit in the presence of U.S. ground forces in Europe, and in the pattern of deployment of U.S. intermediate-range nuclear systems and naval forces.

The argument about whether SDI would make it more or less likely that these conventional and nuclear deployments would remain intact seems closely balanced at the moment. Some say that if SDI worked, the United States would be emboldened to be yet more protective towards Europe than now. Others say the United States would profit by the increased protection it enjoyed to give rein to the tendency, which is always present, to reduce or withdraw its European commitments. The minority which oposes NATO says, as it has said before, that the United States would be able to contemplate limited war in Europe with impunity.

Which assessment is true depends on who the American people elect, and this uncertainty is the price of democracy. Twice this century the United States, Britain, and France have together celebrated victory in world wars of European origin. But in both, Europe had to wait for U.S. assistance until the United States itself was attacked. The first time the British fought alongside France and Italy for two years, the second time quite alone for three years.

These memories are seldom mentioned, because of our self-destructive politeness.

But they are real. We do not, however, demand greater predictability of the United States because of them; we are ourselves unpredictable in our relations with our friends who are weaker, and we would certainly sooner have an unpredictable democracy on our side than a predictable tyranny.

In terms of NATO's policy of forward defense and flexible response, would we lose on the swings whatever might be gained on the roundabouts?

In other words: If the U.S. military presence in and on behalf of Europe were enfeebled, whether by the cost of SDI or by the United States lightening the political and financial burden of its European commitment, would the Soviet Union procure and deploy weapons in such a way as to threaten Europe selectively, and thus blackmail NATO as a whole?

Knowing the Soviet Union from closer than the United States, Europeans must answer yes. We certainly think that the Soviet Union would find it impossible to resist the temptation to increase its ability to browbeat and blackmail Europe.

The wrong way to prevent this happening would be for the United States to press on with SDI while the Europeans made up for the reduced U.S. strength in Europe by new procurements and deployments of their own. That would cost us all even more and mean even more weapons on the face of the earth, as well as in space. The right way would be disarmament.

Instead of helping to answer Sir Geoffrey Howe's questions about the desirability of SDI, U.S. Defense Secretary Caspar Weinberger asked European NATO governments to tell him within 60 days how they proposed to join the research.

The reactions to this request have ranged from the outright French rejection accompanied by a counterproposal, the "Eureka" program, to the German attitude of timid hankering. Britain is between the two. (Reports in the United States that Thatcher favors strategic defenses are mistaken). Norway is pretty much with Britain, tending towards France. The Danish parliament has instructed its government to have nothing to do with it. Italy has suggested that the United States start talking to the Soviet Union right away about where research becomes development. Outside Europe, Japan is close to Germany, Australia is close to France, and of course New Zealand, being in disgrace with the United States, has not been invited at all.

The invitation to Israel presents a special problem, since Israel's repeated flouting of U.N. resolutions and continued illegal occupation of foreign territory, despite European, and indeed U.S. pleas, makes any military association impossible for us. Like Nicaragua, this is a general problem of European-U.S. relations.

The debate on how to answer Weinberger's request (the 60-day ultimatum was withdrawn) is a difficult one. If anyone wants to develop rapid advances in computers, parallel processing, sensors, directed energy beams, cryogenics, and so forth, the cost-effective way to do it is directly, not as a by-product of a military procurement for which there has been no military demand. We clearly reject the proposition that any military activity can properly be undertaken for the civil spinoff it may yield.

It is precisely because of this feeling that France has proposed the Eureka research program, and Britain and Germany have agreed to join in. It would be European and civilian, and would deal with many of the same technologies as SDI. The possibilities of fruitful interfacing with SDI are obvious.

Although the history of European attempts at joint programs in applied research is not encouraging, there have been successes in pure research, particularly CERN (European Center for Nuclear Research). Every opportunity to overcome past shortsightedness must be welcomed.

The SDI crisis could become, if it is not already, the worst in NATO's history. In some ways it resembles the multilateral force crisis of the mid-1960s. That was shortlived, and the waves of ardent U.S. missionaries soon ceased trying to explain our own interests to us. This one has gone on longer already, and the missionaries show no sign of tiring. NATO itself is at stake, and two views of NATO have never been more sharply and dangerously in contrast; the naive view of NATO as a collection of countries with one single interest, equal and equally intense to all, and the realistic view which sees it as a collection of countries with overlapping but distinguishable interests which must be respected and reconciled. We know SDI would be terribly damaging to our interests, and we doubt that anyone can identify our interests better than we can. There is a widespread European opinion that it would also be damaging to U.S. interests, but we do not think we can identify those better than the United States can.

SDI concerns all the world and raises questions which are only now being identified. They are far from being answered in a way which could preserve NATO's unity. The answers, when they do come, will have to reflect the fact that SDI and disarmament are world concerns.

MYTH OF THE DAY: THAT FEDERAL BORROWING IS GOOD FOR THE ECONOMY AND TAXES ARE BAD

Mr. PROXMIRE. Mr. President, some administration officials, blinking at a $2 trillion national debt, are arguing that it is better to borrow than to increase taxes. They believe that raising taxes will retard economic growth while borrowing is neutral.

What a myth! This myth cannot be supported on economic or political grounds. It is a smokescreen, intended to obscure the uncomfortable fact that the national debt has doubled in 5 short years.

Look first at economics. What causes economic growth? That happy situation takes place when we bring new resources into use or when we make more effective use of those already available or some combination of both.

But if taxes are used to improve the technical capabilities of the American worker, that improves one of the fundamental underpinnings of growth. Such taxes would be pro-growth, not anti. The same argument would hold for borrowed money.

What counts then is not so much where the money comes from but how it is used. How has this administration used the enormous sums it has borrowed? It has used this money for two of the least productive types of Government spending—armaments and interest payments.

Somewhere in the neighborhood of 60 percent of the increased debt is directly attributable to the defense buildup and to the costs of carrying the additional debt. Sure, there are some technological spinoffs from defense work, but when compared to the money spent, the productive aspects are negligible. Interest payments do nothing to improve productivity but merely postpone the day of reckoning.

On political grounds, increased taxes are going to be a part of any package which really reduces the deficit. It is so large that even the administration cannot make more than a dent in it by recommending spending cuts. If the taxes imposed come from the right sources, from closing nonproductive loopholes, for example, then we could actually improve the prospects for growth by raising revenue.

To assert that taxes are antigrowth, while borrowing is somehow less dangerous, is myth making at the level of Aesop. Real antigrowth policies take money from productive uses, whether public or private, and put it to nonproductive use. At doing that, this administration is the champion.

TEMPTATION OF MADNESS

Mr. PROXMIRE. Mr. President, recently at the annual meeting of the American Psychiatric Association, Holocaust survivor and noted author Elie Wiesel described his experiences during the Holocaust and said he is trying to determine whether elements of madness exist today similar to those that existed during World War II.

Wiesel delivered his lecture to the American Psychiatric Association on the theme, "Temptation of Madness." Wiesel told the psychiatrists in the audience that he needed them to explain to him how so many people who suffered through the horrors of Nazi concentration camps could keep their sanity in the midst of the madness around them.

Wiesel noted, "Perhaps we discovered that to deny the present we could seek our refuge in the past."

Wiesel's intention in giving the speech was to link his past experiences with the present and warn that the type of madness that characterized events in World War II could arise again.

Wiesel emphasized that there are 41 wars now being waged around the world. He wondered to his audience if humanity is again giving in to the temptation of madness that took over during World War II.

History has shown that such madness surfaces periodically, Wiesel said, and he hoped that with the nuclear threat facing the planet today, this madness was not about to resurface.

The madness that Wiesel so fears is not as removed from today's world as

we would like to think. Wiesel cautioned, "The real enemy is not evil, like some believe, but indifference." It is this indifference that we must always guard against.

Mr. President, the warning of Elie Wiesel is timeless. History, indeed, has a pattern of repeating itself. Indifference to acts of genocide only increases the likelihood that the horrors of the Holocaust will be repeated.

The United States should act swiftly to ratify the Genocide Convention and ensure that the attitude of indifference that Mr. Wiesel rightly fears is never again allowed to develop. A strong international commitment to prevent and punish acts of genocide would guard against the threat of indifference.

Mr. President, the strong international commitment is there. The United States needs only to ratify the Genocide Convention to show that it stands firmly opposed to the type of brutality perpetrated in the Holocaust and that it is committed to prevent it from ever happening again.

Mr. President, I think we should recognize that the Senate, by an overwhelming vote late last year, pledged itself to take up the Genocide Convention early in the 99th Congress. We are no longer early in the 99th Congress. We have not taken it up. It has been recommended by the Foreign Relations Committee by a vote of 10 to 1. The leadership enthusiastically favors it. The President of the United States favors it. It seems to me, Mr. President, that the time to act on the Genocide Convention is certainly here.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF SENATOR MOYNIHAN

The PRESIDING OFFICER. Under the previous order, the Senator from New York [Mr. MOYNIHAN] is recognized for not to exceed 15 minutes.

DEFECTION OF KGB AGENT

Mr. MOYNIHAN. Mr. President, in this morning's press we learn that the chief of the KGB station in London, a Mr. Oleg A. Gordievski, has defected to the British and has been granted asylum.

In consequence of his early conversations with British authorities, the Government there has ordered the explusion of 25 Soviet nationals from the United Kingdom on grounds of espionage.

Mr. David Goodall, a civil servant at the Foreign Office, is reported to have told the acting Soviet chargé d'affaires that "the nature and scale" of Soviet intelligence activities was "completely unacceptable." Thus the expulsions.

Mr. Goodall's statement reflects a realistic assessment that there is going to be a certain amount of intelligence activities by any embassy in any country. But when these activities shade over into espionage, and into the violation of law of the host country, the individuals involved become criminals. While diplomatic immunity prevents the prosecution of some of the persons involved, elemental national self-respect, and concern for the rights of citizens against whom such crimes are directed, requires the expulsion of these persons. The British have not hesitated to do this before and they have this week done it again.

With what contrast, Mr. President, we observe the behavior of our own Government with respect to Soviet espionage in this country.

Ten years ago, Vice President Nelson Rockefeller headed a Presidential Commission of Inquiry into the activities of the Central Intelligence Agency directed against—it was alleged—Americans. That Commission, established by President Ford, included among its members the man who is now President, Ronald Reagan.

Among the findings of the Commission which were published in June 1975, was an extraordinary revelation. The Rockefeller Commission determined that the Soviet Union had begun on a massive systematic basis to intercept telephone conversations in and about the New York City area—this from facilities provided them for use of their mission to the United Nations.

About the time the report was issued, I was nominated by President Ford to be the U.S. Permanent Representative at the United Nations. Vice President Rockefeller went out of his way then to see that I called on him in order to tell me, as a matter of great urgency, that I must understand that anything I would say on the telephone from the U.S. Mission on U.N. Plaza or the U.S. residence on the 42d floor of the Waldorf Towers would be listened to by the Soviet Union, by the KGB.

I took that matter with great seriousness; and I took it with great seriousness when, in December 1975, Mr. Arkady Shevchenko, the Deputy Secretary General of the United Nations for Political Affairs, and the highest ranking Soviet in the U.N. system, indicated his interest in defecting to the United States. In matters involving Shevchenko, I was at pains never to say a word on any of our telephones—as a matter of fact, on any telephone whatever—and confined myself very much to personal exchanges—mouth to mouth, you might say—in places where the possibility of being overheard was minimal. Madison Square Garden, incidentally, turned out to be an excellent place.

The reports from London today state that the defection of Mr. Oleg Gordievski is the most important defection since that of Shevchenko 10 years ago.

Mr. Shevchenko has since published a memoir, earlier this year, in which he discusses the events that led to his defection, the highest level Soviet defection in the history of the Soviet Union. Mr. Shevchenko was on anyone's short list of someone who might succeed Mr. Gromyko one day. He was a protege of Mr. Gromyko.

In "Breaking With Moscow," Mr. Shevchenko described how he would go out to Glen Cove, Long Island, in Nassau County, to Killingworth, a kind of summer estate that the Soviets own there—it is sensible to get out of Manhattan on occasion—and find that the attics and garages were stuffed with telephone interception equipment.

The Soviets later built a 22-story building in the Riverdale section of the Bronx, which, it turns out, is just a communications tower. They intercept and record the microwave telephone conversations that pass through in New York City. They do the same on 16th Street here in Washington, four blocks from the White House, in their Embassy, which happened to be the czarist embassy. If any Members of this body would like to see what they do on 16th Street, it is not hard, though one should hurry, however, because they will not be there long. For now, one could go up on the roof of the Washington Post building on 15th Street and look down at the array of atennae and telephone boxes and so on. You also find them in San Francisco atop their consulate there, which sits on a very high point in San Francisco.

Here in the Capital, the Soviets will soon move to Mount Alto, the highest point in Washington, where they have built a large new embassy, which will be one of the most important communications facilities in our country. From there, the Soviets will be listening in to every conversation that can be intercepted in their line of sight, and the line of sight includes the State Department, the Capitol, and U.S. Senate office buildings.

And we allow this. No Soviets are expelled, as the British were so quick to expell 25 Russians home yesterday.

We not only allow their espionage to continue; in a certain sense, we encourage it by letting the Soviets know that we know they are doing it and that we will not do anything about it.

This not only encourages the Soviets, but it encourages in them I expect a measure of contempt for us, contempt you can feel when you talk to people who deal with these matters. When a Soviet Embassy spokesman was asked recently by the Washington

Post, "What is this business of your taking Mt. Alto and all the things we hear," he replied, rather nicely, I thought, "You know, we didn't capture the site; we were given it."

When I came down to the Senate in 1977, at the start of President Carter's term, I introduced legislation saying that the President, if he has reason to believe that diplomats of foreign nations are engaged in illegal activities such as telephone interception, should ask them to stop. If they do not stop, he should declare them persona non grata and expel them. Mr. Carter would not do that. And I could not even get a hearing in the House and Senate Foreign Relations Committee.

When Mr. Reagan came in, in 1981, I introduced the legislation again. Again, the new administration opposed this.

In January of this year, at the start of Mr. Reagan's second term, I introduced the measure again, as S. 12. The State Department opposed enactment.

There is a very ominous quality to the opposition. Under the Carter administration, the Government began burying its telephone lines to defense contractors and people like that, and said, "We are going to defend the Government." But the public—well, somehow, that is different. They'll have to look out for themselves. Once in a hearing in the Select Committee on Intelligence when I was presiding, I asked the general counsel of the CIA, "Sir, is this activity going on?"

"Obviously, it is going on," he said.

I asked, "Does that not involve a violation of the fourth amendment rights of American citizens?"

"No," he said.

"No," I said, "How so?"

He said, "The fourth amendment only protects you against intrusions on your privacy by your own Government, not by the Soviet Government."

It led me to believe that gentleman went to slightly too good a law school.

In June, I offered the language of S. 12 as a floor amendment to the State Department authorization bill. Our distinguished chairman, the Senator from Indiana [Mr. LUGAR] and his not less distinguished and learned colleague, the Senator from Rhode Island [Mr. PELL], accepted this measure. There was no objection expressed to it. The bill went to conference where representatives of the Department of State and—well, I will just leave it at the Department of State—informed the conferees that it was the desire of the administration that this amendment be dropped, stating that it involves some unspecified risks to the Nation.

Now the language of the amendment, like S. 12 itself, states specifically that the President ought not expel foreign diplomats engaged in electronic eavesdropping if there are any national security reasons. If he does not want to do it, he just does not have to do it. The purpose and the language of the amendment is to indicate that the U.S. Senate thinks the fourth amendment rights of American citizens are violated by the Soviet Union when it listens, no less than they would be by the American Government when it listens.

It is explicitly illegal for the U.S. Government to involve itself in this sort of activity. But when it comes to the Soviet Government, well, the conferees just dropped the matter.

Yesterday's New York Daily News, the largest circulation newspaper in our country, and possessing one of the finest editorial pages, of great thoughtfulness and interest and reliability, ran an editorial which I should like to read into the RECORD. If I have a moment, Mr. President, I am going to read it, not ask that it be printed.

The editorial is entitled "It's for You, Ivan."

Are Russian agents listening in on your phonecalls? That's neither a joke nor a paranoid fantasy.

Then it says, as I have pointed out, that the Soviets have a batch of buildings on 67th Street in Manhattan, in Glen Cove and in the Bronx.

Their dishes can suck microwave phone transmissions right out of the air.

Federal agencies have guaranteed the confidentially of their conversations by buying more than $6 billion worth of secure phones—a single unit can go as high as $35,000. Ordinary folks have no such protection. That's why Moynihan is ringing alarm bells.

One issue is the invasion of privacy. If U.S. agents were wiretapping indiscriminately, there'd be a national hullabaloo. Little heads would roll. Yet no one in the State Department or Congress—with the exception of New York's Moynihan—gives a hoot when Soviet spies violate a highly prized constitutional right.

The other issue is national security. There's ample evidence the Russians eavesdrop on Wall Street financial and banking traffic, gathering information that could be used to hurt this nation. They also can listen to personal calls—a client confiding in his lawyer, an executive arranging a love affair—that can be used to blackmail.

Mr. President, we recently learned that our President, our greatly respected President, has issued an Executive order ordering that the car telephones used by high Government executives in this town be protected against eavesdropping by the Soviet.

Concern about this threat to Americans' civil liberties grows. An official of the National Security Agency, Mr. Walter G. Deeley, has raised it publicly. Let me say in 8 years on the Intelligence Committee, I do not remember a public statement of any sort from the NSA nor had we ever any sense that material was being given to the press from the NSA.

Mr. Walter G. Deeley said we are compromising the security of this country. He said we are going to need 500,000 phones at $35,000 each that are "user friendly." But, he said, that is not the point. The point is we are letting the Soviets invade the privacy and the confidentiality of the whole of society. And we do nothing about it.

Mr. President, I do not know where we go from here. I do not know what the world thinks about us. The British throw people out of their country for violating their rules. We will not.

I would like to remind the President, if I may, of the findings of the Commission headed by Vice President Rockefeller, that Mr. Reagan was involved in. The Commission was very clear on the point that possibilities of blackmail that are developing from Soviet espionage are real and immediate and must be attended to.

Ten years have gone by. We have done nothing. To the contrary, the biggest installation of all is about to begin on Mount Alto.

There is, I believe, an explanation why we do nothing. I don't know yet what the reasons are, but it requires an explanation. Blackmail may be one. Pusillanimous dispositions may be another. I ask, Mr. President, are we afraid of these people? Do we dare not tell them to stop? Is there any other reason?

We hear from the highest levels of our Government talk about Evil Empire, spy dust, we will show you.

Well, why do we not just tell Soviet agents in this country to stop violating the laws of the United States, including the Constitution thereof? Just stop.

If they do not, why do we not just tell them to get out, and tell them also to get their KGB agents out of the U.N. Secretariat in New York?

When Shevchenko came over a decade ago we picked up the names of all manner of KGB agents and activities in the U.N. Secretariat that were in clear violation of article 100, section 2 of the U.N. Charter which expressly forbids any member government giving directions to a national of that government who happens to be employed in the Secretariat.

Yet the KGB is all over the place. Mr. Shevchenko names them in his book. When they found out those names, once Mr. Shevchenko came, and the fact that he was involved with us became public, the Carter administration expelled them.

Margaret Thatcher is not afraid to do that. Nor was Edward Heath.

We are. We are beginning to behave like a nation that is afraid of our adversaries, afraid even to insist upon the elemental constitutional rights of Americans in this country.

Nelson Rockefeller 10 years ago told us the Soviets were listening in on our telephone conversations, and that it has taken place at a level increased beyond any imagination. At that time,

they had not opened their 22-story communications tower in Riverdale in the Bronx and at that point they had been given but certainly did not yet have Mount Alto where the new Embassy is going to be.

Today they do. And we do not dare say, "Stop it."

The British, on the other hand, do seem to mind, and the Soviets do not seem to be surprised. If a KGB station chief defects and gives out the names of people involved in illegal activity, and the British expel them, the Soviets do not say, "You can't do that." They got caught. They smile and chuckle, and off they go back to Moscow for a few weeks leave and another new assignment. It is part of their business.

Imagine the contempt on their part when they observe our administration shaking its fist in the face of communism—everywhere save in the People's Republic of China, where communism in apparently considered by our Government to be of a benign nature—while supinely submitting to the subversion of the integrity of the American telephone system by the Soviet Embassy itself.

Mr. President, this Senate and this Congress now, bears a measure of responsibility for complicity in this submission.

We adopted on this floor the measure, S. 12, that I introduced in January. It was taken to conference, and we dropped it.

Are we saying that we are afraid of the Soviets also? I put it this way: I mean, not just afraid of the scandal, the noise, the difficulty, the bad measure. The British with Margaret Thatcher did not hesitate to throw them out for less.

Is it possible that Nelson Rockefeller's forecast of blackmail is showing its effects here in Washington?

Remember, Mr. President, your telephone calls are listened to. Mine are. The distinguished Senator from Colorado [Mr. HART] who knows a very great deal about this matter is here on the floor. Most especially his telephone calls are monitored because they are more interesting—having to do with the future of American politics—than certainly those of this grayed Senator from New York.

Do we have a Government that distinguishes between itself and its people, that protects itself but does not care about its people?

I hope not, Mr. President.

I ask unanimous consent to have printed in the RECORD at this point the editorial from the Daily News, entitled "It's For You, Ivan."

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the New York Daily News, Sept. 12, 1985]

IT'S FOR YOU, IVAN

Are Russian agents listening in on your phone calls? That's neither a joke nor a paranoid fantasy. Sen. Pat Moynihan points out that the Soviets have a batch of strategically located buildings—their UN mission on E. 67th St., a compound in Glen Cove, L.I., a tower on high ground in the Bronx, their embassy on a hill in Washington, D.C.—bristling with electronic gear. Their dishes can suck microwave phone transmissions right out of the air.

Federal agencies have guaranteed the confidentially of *their* conversations by buying more than $6 billion worth of secure phones—a single unit can go as high as $35,000. Ordinary folks have no such protection. That's why Moynihan is ringing alarm bells.

One issue is the invasion of privacy. If U.S. agents were wiretapping indiscriminately, there'd be a national hullabaloo. Little heads would roll. Yet no one in the State Department or Congress—with the exception of New York's Moynihan—gives a hoot when Soviet spies violate a highly prized constitutional right.

The other issue is national security. There's ample evidence the Russians eavesdrop on Wall Street financial and banking traffic, gathering information that could be used to hurt this nation. They also can listen to personal calls—a client confiding in his lawyer, an executive arranging a love affair—that can be used to blackmail.

Moynihan is pushing a measure allowing the feds to expose and deport foreign agents—even those with diplomatic immunity—caught at electronic surveillance. The administration rejects the bill, saying it already has the power. If so, why isn't it using it? The Reagan administration should wake up to what is potentially a serious threat to American.

Mr. MOYNIHAN. Thank you, Mr. President.

Mr. HART. Mr. President, will the Senator from New York yield for a question?

Mr. MOYNIHAN. I am happy to yield for a question.

Mr. HART. That is if the time situation permits.

Mr. President, I congratulate the Senator from New York on his, as usual, informative and provocative statement.

I was interested in observing in the press in the last 48 hours, comments on the bill that he was here today remarking upon and the defense of the administration to its failure to support, and resistance of this legislation was that it would give away vital secrets—I think "sources and methods" is the catch phrase.

Without getting into those sources and methods, I would be interested in the response of the Senator from New York to that allegation that we cannot as a government adopt the program that the Senator from New York has been advocating because to do so, to shut down an illegal interference, would give away the methods by which we do so. Is that correct?

Mr. MOYNIHAN. I thank the Senator from Colorado.

Let me tell the whole of the Senate to listen to one of these sources and methods. You can go up to the roof of the Washington Post building and you can look down at the interceptors on the top of the Soviet Embassy.

I revealed a secret perhaps, but I do not know the world was not ready for it.

An agent, a named officer of the FBI, has said that 40 percent of the Soviet Embassy personnel in Washington are involved in interception of telephone conversations. The FBI knows. They do not reveal that sort of thing to the press casually. They know who they are.

It is the same way, I am sorry to say, if you look at a biography of any individual in an embassy, ours or others, you know who the intelligence people are and you know who the technical people are. It is not that hard. We know.

We know and do not dare say. Or we do not dare say that we do not know. Either way it does not speak well of us.

There are constitutional rights of American citizens involved here. We do not take an oath when we come into this body to maintain wheat prices or see that mass transit moneys are appropriated, or whatnot. We take an oath to defend and uphold the Constitution of the United States, and that includes the fourth amendment.

And it is being violated and we are letting the administration tell us we need not worry.

Mr. HART. Mr. President, I thank the Senator from New York. I will just ask one further question along the same line.

Is it the judgment of the Senator from New York, given his years of experience on the Intelligence Committee, that we can in fact adopt the proposal which the Senator from New York is advocating without jeopardizing important sources and methods of our intelligence community?

Mr. MOYNIHAN. I believe it to be so. If I may say to my friend from Colorado, as he well knows, S. 12 provision dropped in conference specifically states that if the President decides that for national security reasons he should not expel persons involved, he does not have to. But the presumption in our policy should be to expel foreign agents engaged in such activity.

Let the President judge, but let the President hear that Congress does not like this, and would prefer a different policy be adopted before this matter becomes a scandal. It bespeaks a fear of confrontation, that of serious confrontation, not symbolic confrontation.

Stop breaking the law in the Nation's Capital, not just violating the law, but violating the Constitution.

I think at this time is not the end of the subject as far as I am concerned, and I hope the Senator from Colorado agrees with me that we should discuss it at greater length at another time.

Mr. HART. Mr. President, I thank the Senator from New York, and I certainly do agree. We would hope that at that time those advocating or defending the administration position would be prepared to do so on the floor of the Senate.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order there will now be a period for the transaction of routine morning business not to extend beyond the hour of 10:45 a.m. with statements limited therein to 5 minutes each. There is now less than 1 minute remaining.

Mr. MOYNIHAN. I ask unanimous consent that the period for the transaction of routine morning business be extended 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ETHNIC AMERICAN DAY

Mr. D'AMATO. Mr. President, I rise today to again draw attention to Ethnic American Day. As a cosponsor of Senate Joint Resolution 32, a resolution proclaiming September 15, 1985, as Ethnic American Day, I believe it is extremely important that we honor all Americans who, like myself, have roots in other countries around the world.

Ethnic American Day serves to remind us, just through its name, of two very important lessons. The world ethnic makes us realize that we are all of varying heritage. This was, and is, a new world that our parents and grandparents came to live in for the love of freedom. Through the symbolism of this day, we are all reminded of our heritage and encouraged never to forget what makes us different and special.

At the same time, it is not just Ethnic Day, but it is Ethnic American Day. The second word reminds us all that, although we were not originally indigenous to this country, we have now become Americans. We have not forgotten our cousins in foreign lands, but we have also found new families and friends in our new home.

America has truly been the land of opportunity, and part of what has truly enriched this country has been the wonderfully different cultures that have blended into this new melting pot. In my own State, representatives from all around the world can be found in Chinatown, Little Italy, Harlem, and elsewhere.

I am proud of both my heritage and my American birthright. All Americans—Asian, European, African, Middle Eastern, Latin American—should share this swelling pride and voice it on Ethnic American Day.

CRACKDOWN ON MARIJUANA

Mrs. HAWKINS. Mr. President, our entire Federal Government recognizes the need to crack down on domestic marijuana cultivation. Not only has the able Drug Enforcement Administration taken steps toward achieving the eradication of U.S. grown marijuana, but the entire Department of Justice has also mobilized its forces in this effort.

In a recent Washington Post editorial, these efforts are discussed, and the point is made that "While this country asks its Latin neighbors to take politically costly steps to stamp out their drug business, it behooves Americans to do something visible and major about their own." I couldn't agree more, and obviously, in light of most recent Federal actions, fellow Government officials agree with this assessment as well.

I was proud to have joined Senator STROM THURMOND recently in calling on the Department of Justice to take the necessary action to curb U.S. grown marijuana, by instituting a nationwide program of cannabis eradication. We took this opportunity to ask the Nation's Governors to form regional air operation task forces with the Federal Government to provide an invaluable deterrent in narcotics trafficking.

I am pleased that both agencies have acted expeditiously. The Department of Justice instituted Operation Delta 9—a 50-State raid on marijuana crops. This quick and effective action is to be commended, as is the bravery exhibited by the Federal law enforcement agents involved. There were, in fact, reports that agents were fired upon by defenders of the marijuana fields.

Mr. President, this is proof indeed that the traffickers in marijuana are no less harmful than the drug itself. The Washington Post editorial cites incontrovertible evidence of the destructiveness of marijuana, and concludes that increasing national awareness of the real dangers of this drug is the reason for declining marijuana consumption. As is stated in the Post:

> Now it seems that the country has reached an equilibrium on marijuana. Americans know it's unhealthy and use it less often. And they insist, properly, on enforcing the law against commercial production and distribution.

Mr. President, this is good news. But there are still unscrupulous drug producers, in our own country, who cultivate this harmful product for profit. It is encouraging that the Federal Government is embarking on this coordinated effort to enforce the laws against marijuana cultivation, sale and possession.

Mr. President, I ask that the Washington Post editorial entitled "The Crackdown on Marijuana," be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

THE CRACKDOWN ON MARIJUANA

When you see a picture of Attorney General Edwin Meese squinting at marijuana plants seized in a raid in the Ozark National Forest, you may be tempted to conclude, as one critic of the marijuana laws did, that Operation Delta-9—last Monday's 50-state raid of which the Ozark operation was part—was "just good propaganda." Certainly Mr. Meese understands that it is probably impossible to stamp out marijuana entirely. It is easily grown and in considerable demand. Possession and use of marijuana in small amounts is a minor offense now in most states.

Even so, we think Mr. Meese and his 2,200 federal, state and local comrades were not engaged in a quixotic enterprise. For one thing, while this country asks its Latin neighbors to take politically costly steps to stamp out their drug business, it behooves Americans to do something visible and major about their own. And if marijuana use is common, there is good evidence—about as good as is possible, considering that the activity is illegal—that marijuana use is less common in the 15-to-25 age group than it was a few years ago, and it may well be less common in older age groups as well.

So the predictions commonly made by marijuana advocates in the 1970s that the habit would become well-nigh universal have not come to pass. A dozen years ago you could not refute claims that marijuana smoking was harmless, and you had to concede that some of the claims made against it were exaggerated. But now, after a decade in which perhaps 30 million Americans have smoked marijuana, evidence of harm—harm on the order of that caused by tobacco and alcohol—is accumulating. It would not be surprising, then, in a nation where cigarette and liquor consumption is declining, if marijuana consumption were declining too.

In the 1970s it was said that marijuana, like alcohol, could not effectively be prohibited. But it was forgotten that, in the century up to repeal, alcohol use was vastly reduced in the United States, partly by legal prohibition, more by persuasion and the power of ideas. Alcohol use increased after repeal, but to nothing like the early 19th century levels. Now it seems that the country has reached an equilibrium on marijuana. Americans know it's unhealthy and use it less often. And they insist, properly, on enforcing the law against commercial production and distribution. Mr. Meese's raid in the Ozarks and Delta-9 serve a useful purpose not just in making the business of marijuana less secure but in underlining Americans' intention that this law should be enforced.

THE NEW PRESIDENT OF THE COMMUNICATIONS WORKERS OF AMERICA

Mr. RIEGLE. Mr. President, one of the most difficult transitions that any organization can experience is a change in leadership at the top. Unless both the organization and its new chief executive are flexible, the pass-

ing of the torch can be a difficult, painful exchange.

With this thought in mind, I want to call to my Senate colleagues' attention that the Communications Workers of America, one of our Nation's pre-eminent labor unions, has recently undergone in a successful manner this rite of passage. On July 16, in San Francisco, CWA elected Morton Bahr to succeed Glenn E. Watts as CWA's president.

Morty Bahr has achieved a national reputation that easily exceeds the geographical jurisdiction over which he presided. Indeed, his compassionate commitment to human causes and his masterful skill as an organizer are qualities that are widespread in appeal.

Mr. President, Morty Bahr has a big challenge ahead of him. The telephone workers who built and maintained the Bell System find themselves in a period of great uncertainty during the time of the telephone divestiture. The breakup of the telephone company has resulted in significant upheaval in the telecommunications workplaces of America, with much dislocation. As CWA prepares to enter next year its first round of post-divestiture collective bargaining, the union faces a major task.

I am hopeful that Morton Bahr will guide CWA to a successful resolution of next year's contract negotiations. Similarly, it is vital that under his guiding hand CWA continue its proud tradition of serving as an active voice for achieving the enactment of responsible public laws.

I am confident that Morton Bahr will provide inspired leadership for CWA during this new era of dynamic change. I wish him well as he embarks upon this challenging endeavor.

CONGRESSIONAL CALL TO CONSCIENCE

Mr. GRASSLEY. Mr. President, as a cosponsor of the International Parliamentary Group for Human Rights in the Soviet Union [IPG], I want to express my strong support for Dr. Andrei Sakharov and Elena Bonner.

The Soviet Union's cynical refusal to provide information on the Sakharov's whereabouts or to allow independent observers to verify Dr. Sakharov's condition is in direct violation of the Helsinki accords and the Universal Declaration on Human Rights.

General Secretary Gorbachev has made great efforts to convince us that he stands for peace. How are we to respond when Mr. Gorbachev treats Dr. Sakharov, a Nobel Peace Laureate, in such a callous manner?

I have pledged to Sakharov's stepson, Alexei Semyonov, that IPG's 700 members in 16 countries will not cease their efforts on Dr. Sakharov's behalf until he and Elena Bonner are allowed to leave the Soviet Union.

I urge President Reagan to meet with Alexei Semyonov to demonstrate that the United States believes that human rights for people like Dr. Sakharov is at the cornerstone of our democracy.

IPG has contacted our colleagues in the French Parliament to ask that President Mitterand also meet with Alexei. We believe that the Sakharov's plight must be raised forcefully during Mr. Gorbachev's visit to France next month.

Agreements between the United States and the Soviet Union prove effective only in proportion to our commitment to enforce them. The Reagan administration must tell Mr. Gorbachev that the United States will not have confidence in Soviet promises until the U.S.S.R. lives up to its human rights commitments to Andrei Sakharov and Elena Bonner.

CWA PRESIDENT MORTON BAHR—INNOVATIVE LEADER FOR CHALLENGING TIMES

Mr. KENNEDY. Mr. President, at its 47th annual convention, the Communications Workers of America recently elected Morton Bahr as its new president. Mr. Bahr is a distinguished labor leader whose qualities of innovation and effectiveness have made an indelible impression on all of us who know him.

Indeed, we in Massachusetts are already aware of Morty Bahr's formidable leadership skills. For the past 16 years, he has served as CWA's vice president for the region of the United States that extends from New Jersey through Maine. During that period, Morty has provided bold, decisive directions for CWA to follow, and the union has benefited greatly from his experience.

In fact, his leadership ignited a period of major growth within CWA, with membership more than doubling during his tenure as head of the union's district 1.

Perhaps the best example of Morty Bahr's aggressive, foresighted tactics is his enduring commitment to organizing the unorganized, whether they work in the telecommunications field or in the public sector. Indeed, Mr. Bahr has been a pioneer within CWA in addressing the needs of State and local employees. He understands that public workers have the same dreams, goals, desires, and aspiration as private sector employees. In that connection, he played an indispensable role on behalf of CWA in enlisting into the union 32,000 public workers in New Jersey.

In addition to organizing, political activity has been at the core of Morty Bahr's career. He has been a delegate to the last three Democratic National Convention, and in 1980 he was a member of the National Democratic Platform Committee.

More than this, Morty Bahr has also been a special friend to me, and I am particularly grateful for the wise, counsel and support he has given to me over the years.

Mr. President, Morty Bahr is not only eminently qualified to be president of CWA, but he and the world's largest telecommunications union are a nearly perfect match.

CWA is a progressive, community-mined union. Its legislative agenda on Capital Hill is one of the most comprehensive of any national organization. It is also an activist union with grassroots rank-and-file members residing in all 50 States and in each of the 435 congressional districts of American.

At this special time for Morty Bahr, I also want to acknowledge his indispensable partner, Florence, and their two children. I know that they are proud of Morty's accomplishment and the success he has achieved.

As CWA approaches its golden anniversary, which will take place in less than 3 years, I am pleased that the leadership of this progressive union is in the capable hands of Morty Bahr. He is a thoughtful executive and a man of bold action. His proven track record is an invaluable asset to CWA and to the entire American labor movement, and I am honored to congratulate him on his extraordinary career and the new honor he has richly earned.

Mr. President, I ask unanimous consent to have printed in the RECORD a biographical profile of Morty Bahr, and the text of his eloquent acceptance speech at the CWA Convention in San Francisco last July.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CWA—A BIOGRAPHICAL PROFILE OF MORTON BAHR, PRESIDENT, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

Morton Bahr, the third president of the Communications Workers of America, brings more than three decades of experience to the task of leading the world's largest communications union. CWA represents more than 650,000 workers throughout the United States.

His election as CWA President on July 16, 1985 represents the latest milestone in a career that has been characterized by achievement and an uncompromising commitment to the trade union cause.

A Record of Accomplishment: Prior to his election to CWA's highest position, Bahr served for 16 years as Vice President of CWA's District 1 which includes New York, New Jersey, and the New England States. First elected, District 1 Vice President in 1969, Bahr's leadership ignited a period of major growth within the District, with membership more than doubling during his tenure.

Bahr has been instrumental in CWA's increased organizing efforts in the public sector. CWA's first major entry into public

sector organizing came in 1955 in District 1 when 5,000 New York City public workers chose CWA as their union. From that starting point, CWA has steadily increased its visibility in the public sector to a point where today the union represents some 80,000 public workers. And much of this public sector growth has come in District 1 under Bahr's guidance.

A Commitment to Organizing: Organizing has always been a top priority with Morton Bahr.

Bahr's first association with CWA came in 1951 when he joined the union's organizing campaign at Mackay Radio & Telegraph Company (now ITT World Communications) where he had been employed as a radio operator since 1947. He was instrumental in CWA's organizing victory at the company, became increasingly active in union affairs, and was elected President of CWA Local 1172 in 1954.

In December, 1957 Bahr joined the national CWA staff as an organizer, and his first assignment was to direct CWA's ambitious effort to bring some 24,000 workers of the New York Telephone Company's plant department into the union. His determination and commitment again paid dividends, the result being a major organizing victory for CWA.

In recognition of his leadership in the New York Telephone organizing drive, Bahr was named CWA's New York Director in 1961. He held that post for two years before being promoted to Assistant to the Vice President of District 1.

Bahr recalls the 1960s as both a time of turmoil and solidarity within CWA. The turmoil came as a result of attempts by the Teamsters to raid established CWA units in New York. Bahr directed the anti-Teamster campaigns for CWA. On every occasion when there was an attempted takeover by the Teamsters, CWA was the overwhelming choice of the workers, with the margin of CWA victories increasing with each election. Hence the solidarity, which grew out of turmoil.

That solidarity was further tested in 1971 when CWA staged an historic 218-day strike against New York Telephone. Some 55,000 workers honored the mammoth strike which Bahr believes finally paved the way for national bargaining with the pre-divestiture Bell System, a long-sought goal of CWA.

"They strike and the unity we showed and the ultimate victory we won, had a profound impact on our union, not just in New York, but nationwide," Bahr recalls. "It showed us what we could accomplish when we're unified, it raised our expectations of ourselves, and it showed the company, as it existed then, that national bargaining was an idea whose time had come."

With the national bargaining concept achieved, Bahr Served on CWA's bargaining committees each of the four times between 1974 and 1983 when coordinated bargaining between CWA and the pre-divestiture AT&T took place. Each of those efforts resulted in record-breaking contract settlements for CWA.

Looking To The Future: As a result of the historic AT&T divestiture, Bahr Says CWA members must "develop a new mindset about our jobs, our companies, and about our union."

An overriding objective of the Bahr presidency is an attempt "to constantly remind our members that the union plays a greater role in their quality of life than any other institution. We want the union to play a major role in the decision-making process of our member's lives, in everything from consumer purchases to political action."

"We must develop a vision for the future for our members that reassures them that they can count on their union through difficult times . . . that their union has the ability to shape events. We must present our members with a vision of what we want to be and what we can be."

Bahr believes CWA's future is filled with growth potential because:

CWA is the established union in the major growth sectors of our economy—white collar and information services.

Workers in the future will want security and advancement in the telecommunications industry, not just with a single job, department or company. They will look to the union to service those needs.

CWA's strength and reputation makes it an attractive union to professionals and women who are looking for improved employment opportunities.

CWA enjoys a strong presence in the fastest growing part of the labor movement—public workers.

Our union enjoys a position of strong political influence at the local, regional and national levels.

Community Service: Morton Bahr typifies CWA's longstanding reputation as the community minded union. He is a trustee of Nassau (N.Y.) Community College, a member of the Board of Governors of the United Way of America, and has served three years as labor chair for the Greater New York Blood Bank.

Bahr has been extremely active in Democratic Party politics at both the national and local levels. He was a delegate to the 1976, 1980, and 1984 Democratic National Conventions, and in 1980 he was a member of the National Democratic Platform Committee. He also chaired the statewide labor committees which played an integral role in the elections of New York Governors Hugh Carey and Mario Cuomo.

Born in Brooklyn, New York on July 18, 1926, Bahr graduated from Samuel J. Tilden High School. During World War II, he served as a radio officer in the U.S. Merchant Marine. He holds a Bachelor of Science Degree in Labor Studies from Empire State College.

He is married to the former Florence Slobodow. They have two children and four grandchildren. The Bahrs reside in Washington, D.C.

ACCEPTANCE SPEECH BY MORTON BAHR, CWA CONVENTION, JULY 16, 1985, SAN FRANCISCO, CA

Brothers and sisters, thank you . . . for your support and the confidence that you have expressed in me. But this recognition and honor could not have been possible without the hard work, trade union dedication and friendship of so many of my colleagues throughout the union.

And I also want to introduce my wife, Florence. I must admit that like the spouses of many elected union officials, she isn't altogether convinced that you've done us a favor.

But she's shared CWA's victories and defeats over many years, and she remains my most important advisor and thoughest critic.

I want to begin my remarks by paraphrasing the feelings Dr. Martin Luther King once expressed on an occasion similar to this:

"With an abiding faith in our union and an audacious faith in the future of the American Labor movement, I accept the awesome responsibilities of serving as your president."

It's said that the test of a great leader is to leave behind in others the same conviction, dedication and will to meet the challenges of the day. Glenn and Louis, you have met that test with flying colors.

On behalf of all of us in CWA and the international labor movement who have benefited so much from your leadership, thank you.

Last night, we paid tribute to your contributions to our union. But I want to offer my personal thoughts to the entire convention as we bid you farewell.

You have led this union through a great struggle. You have prepared us well for the massive challenges generated by divestiture, technological change and Reaganomics. You have shown us that we can stand successfully against unjust concessionary bargaining.

You have put into place the policies from which we build upon as we move from the Watts-Knecht era. And you set a new standard of unselfish union leadership which has led us to this moment. The unity and solidarity that we enjoy here is the single greatest, living memorial that could be erected in your name.

You deserve our gratitude, forever. . . .

Sisters and brothers, today the torch of leadership changes hands for only the third time in the short history of CWA.

And as we confront the challenges of our day, let's take courage from our history:

CWA was born out of the first nationwide telephone strike in 1947 which demonstrated the need for a strong union that could build unity among workers.

Since then, our union has grown from the cradle of struggle.

Our union has matured from our ability to change.

And today, CWA represents more than 650,000 workers. And we have broken new membership ground in the public and service sectors, organizing tens of thousands of public, health care and other workers.

We are poised for the future because CWA is the union of the future the technology union.

And technological change is touching the lives of nearly every worker in nearly every industry.

By 1990, for example, we estimate that more than 30 million jobs will require some level of technical skills.

So, let the past protect our tradition and heritage from which we gather so much strength.

But to reach our goals in the future, we must sail onward . . . sometimes with the wind and sometimes against the wind. But sail we must. We cannot lie at anchor in memories of the past, nor drift with the tides, wishing things were the way they used to be.

These are, indeed, "new times for new leaders."

When Jim and I discussed the objectives of our administration, we both immediately agreed that we must not allow our union to be frozen into inaction by fear of failure.

We intend to try new ideas. We intend to encourage initiative among the staff. We intend to reach out to the locals for experimentation. We intend to involve each individual member in the future of our union.

And where we have problems, I want to know about it so we can take corrective

measures. Because I pledge to you that "the buck really does stop here."

Now, we all should know what this union is against:

We are against the politics of insensitivity and selfishness.

We are against the economics of runaway industries and the nonunion/anti-union environment.

We are against the notion that government has no role in the battle for equal opportunity because women and minorities already have too many rights.

So, I want to outline what this union should stand for . . . . our vision of where we want to lead this union and why:

Next year's round of bargaining is our most immediate concern.

Negotiations with AT&T should look very much like it did in the past except that it will involve 200,000 workers instead of half a million. We will retain the national bargaining structure just like before, with negotiations on local contracts.

As most of you know, AT&T has decided to produce residential telephones in Singapore. . . . The first time AT&T has gone offshore to manufacture equipment. This decision is symptomatic of the national problem caused by so many U.S.-based companies which are trying to cut their production costs by going overseas. And it shows once again that we are not immune from the economic and political events which occur around us. As a result, negotiating stronger job security arrangements becomes an even higher priority.

But even though we face difficult circumstances, a sound working relationship exists between management and the union. I'm confident that we can reach a settlement that will be fair to us, and still permit the company to compete effectively in the new environment.

The situation with the seven regional companies is quite different.

They are doing very, very well. We should expect them to share their economic wealth with the workers who make their profits possible. "Take-backs," "give-backs" or any other form of erosion in our contracts are unacceptable.

And we are well aware of the inferior health programs—the so-called "flex benefits"—which have been imposed on management. We recognize that these "cafeteria-style" benefits are nothing more than an attempt to shift the cost of health care to the workers. We reject it out of hand.

The company tried to weaken our health benefits in 1983, and we sent them a message then. And we are going to give the same message to the regional companies . . . or AT&T . . . or general telephone . . . if they bring the same concessionary demands to the bargaining table in 1986.

Two-tiered wage systems pose the same dangers. These divisive pay plans strike at the very heart of the concept of "equal pay for equal work" and drive a wedge between workers. We will not allow our union to be split by two-tiered wage systems, and will not accept them in our contracts.

In our dealings with the regional companies, our priority goal has been to secure region-wide bargaining, where economic matters would be discussed at a single table with local negotiations in each bargaining unit as in the past. Most of the companies have agreed to some form of regional bargaining. They agree with us that State-by-State bargaining will result in leap frogging, delay and unnecessary confrontation.

But some regional companies still are insisting on localized bargaining. We serve notice on them that a return to the kind of charade-type negotiations that existed in the telephone industry before 1974 will be met with the appropriate response by our union.

Of course, many factors will come into play at the table: The shadow of competitors hovers in the background; regulatory bodies may try to interfere in the collective bargaining process: Divestiture will continue to evolve under Judge Greene's review; and our own members must quickly realize that a new day really has come to the telecommunciations industry.

But notwithstanding the fact that the regions are separate companies, this union intends to work hard to keep major benefits, such as pensions and health insurance, from slipping. We fought hard for these benefits over many years and intend to keep them as uniform as possible.

This union will undertake the appropriate strategy if some of the regional companies think they can break our unity at the bargaining table by trying to play off one group of our members against the other.

So, we are ready if management is going to challenge us. This national leadership team has been tested under fire many, many times in the past. And it would be very short-sighted of our employers if they think we are going to bend now.

Our response today to the actions of the regional companies could very well impact on negotiations for thousands of other workers. So, these principles also will guide our strategy in bargaining for all telecommunications units and for our other major contracts, particularly with the State of New Jersey when that agreement covering 34,000 public workers expires next year.

We have much preparation to do . . . research to undertake . . . communication to complete before we begin negotiations in 1986.

Organizing will become a priority activity that involves my personal attention.

Our union faces the future with hope and optimism. But the rest of the labor movement is in a fight for survival. Organized labor today represents less than 18 percent of the work force. Once mighty unions are shells of their former greatness. The same can happen to CWA if we allow ourselves to go into intellectual retirement.

As you know, IBM recently completed a deal where it can acquire up to 30 percent of MCI, the second largest long-distance company. Coupled with their ownership of Rolm and their videotex deal with CBS and Sears, IBM now has put together the pieces which make it a head-to-head competitor with AT&T.

They did it barely 18 months after divestiture.

IBM also is one of the most anti-union companies in the world. And the employees of MCI and Rolm must be having nightmares about being absorbed into the IBM culture.

I had planned to make this announcement later. But the speed of the IBM-MCI deal indicates that we must issue a timely response.

In September, we will be attending a meeting of the postal, telegraph and telephone international. I will at that time propose that a conference be held of union representatives from all the countries around the world where IBM has plants. I would like this meeting to take place as soon as possible after our 1986 bargaining is completed.

The purpose of the conference will be to analyze the global anti-union policies of IBM, set up a permanent clearinghouse of information and develop strategy to begin a worldwide coordinated organizing campaign against IBM.

We will combine the political economic and social strength of organized labor throughout the world in an effort to target specific IBM plants for organizing breakthroughs. We will label IBM as the J.P. Stevens of the international telecommunications industry.

This will be a long-term effort. It will require patience. But IBM—and all of the other non-union companies in the industry—will come to know that we are serious about protecting our union-won wages, fringe benefits and job security.

And, then, IBM's non-union threat will no longer hover over our bargaining table. We'll cast a giant shadow over them when CWA rises as the future of opportunity for IBM workers.

In the short term, we will focus our attention on the unorganized workers in the telephone industry and other telecommunications companies. And we serve notice on the regional companies that cooperation is a two-way street that doesn't just walk in the companies' direction. They cannot expect us to cooperate with them if they insist on a so-called "union free environment" in the operations of their unregulated subsidaries.

I further want to emphasize our commitment to bring the benefits of trade unionism to public workers. We will achieve membership breakthroughs among the hundreds of thousands of other public, health care and service workers in the nation.

Joe Beirne once held the notion that CWA could conduct a nationwide organizing campaign by turning each union member into an organizer because they live in nearly every community in the Nation. We must make his vision a reality if we are to survive the technological revolution.

We must intensify our political involvement, particularly at the local level.

The moral health of a nation is just as important as our economic health. But I fear our Nation's political life is dominated by people who preach about principles rather than living up to them.

As a result, I see a pattern of selfish insensitivity sweeping the country, and which emanates from the leadership of President Reagan and the Republican Party.

It is the kind of selfish insensitivity that asks, "Are you better off?", rather than your country. . . .

The kind of insensitivity that turns the Government agency of the workers—the National Labor Relations Board—into the enemy of the representatives of the workers.

That peace in the world can be achieved by building bigger and costlier nuclear weapons. . . .

That apartheid in South Africa will go away if we just shut our eyes and close our mouths. . . .

But what troubles me most is the growing selfish insensitivity in our country that has led to the unprecedented rise of hate groups committed to violence against anybody who doesn't fit into some twisted version of Aryan perfection.

I believe most Americans prefer Adlai Stevenson's definition of patriotism which is "the steady dedication of a lifetime," not frenzied outbursts of emotion.

That's why I'm convinced that America will return to its traditions of fair play. Jus-

tice and compassion for all. Until then, CWA and the rest of the labor movement must stand as a bulwark in the political arena against the conservative tides of selfishness and insensitivity.

We must open the doors of union leadership even wider.

I remember a time in the not too distant past when an invisible sign hung over the employment offices of every telephone company in America that warned, "Jews, blacks and other minorities need not apply."

Inside was another sign that said, "women wanted for cheap wages."

CWA was in the forefront of the battle to rip down both signs from the employment offices of the telephone industry and to open the doors of opportunity to all in every other industry in America.

And we can all take pride in CWA's record of support for human rights, whether at home or in such far away places as in South Africa and the Soviet Union.

Now, we must aggressively reach out to embrace all workers within the ranks of leadership in our union. Encouraging more working women and minorities to join us as full-fledged partners in CWA must rank as a top objective.

CWA will provide additional services and programs which encourage the involvement of all our members and their families in our union. I intend to recommend to the CWA executive board that, beginning in 1986, we offer child care at our national convention if a demonstrated need exists. And we strongly encourage similar programs to be developed in connection with district meetings and local membership meetings.

And the union will do more than offer child care.

We will bargain for the economic and social incentives that make it possible for women and minority workers to become more active in our union. And we must keep that objective in mind as we develop our bargaining demands.

We must close the communications gap that exists between the member and the union.

During my travels of the past 6 months, I've become convinced that we face a monumental communications task.

We will encourage a policy of agressively reaching out from every level of our union to our members and potential members. We must reach them on the shop floor, in the office and in their homes.

We must cultivate an image among our members that strengthens the union's credibility in their eyes. Union leaders at all levels must inspire trust and serve as an alternative source of information that is believed and respected communicating with our members is a year-round effort, not something we engage in during the political season or as bargaining approaches. We must become committed to compete in the arena of public opinion for the hearts of our members as well as their minds.

And our message must be the vision this union sees for the future; that CWA has the confidence to control events which shape the lives of our members and potential members, and that this union has the power to improve the worklife and family life of all Americans.

I've laid out an ambitious agenda.

Obviously, these objectives will not be reached soon . . . and certainly not by any one person or team of national union leaders.

That's why we must emphasize the concept of family within CWA as part of our program to involve all of the members of our union in our union.

We need you. . . .

We need all of you. . . .

We want your immediate family to become a part of your CWA family.

We want your spouses involved. . . .

We want your children involved. . . .

We will need their strength and support to help us revitalize our movement. . . . to help restore some of the idealism and energy that the labor movement used to have in its early days.

So, let us send this message to our employers, the politicians, the anti-union baiters, the news media and the workers who want to join with us in the future:

From this day forth, we are rededicating ourselves to building a stronger CWA and a stronger labor movement.

And whether we face the uncertainties of divestiture or the demands of the telecommunications revolution, CWA will turn today's challenges into the opportunities of tomorrow. . . .

Whether we confront an anti-union environment in the White House or the corporate board room, CWA will defend the right of all workers to enjoy the benefits of trade unionism. . . .

Whether we sail against the wind, or with the wind, CWA will speak out for the trade union principles which have brought so much progress to our Nation. . . .

And while others may write about the demise of the American labor movement, CWA will spark a renaissance of brotherhood and sisterhood within our ranks that proclaims:

We're committed. . . .

We're united. . . .

We're family. . . .

We're union . . . and we're damn proud of it.

Thank you.

ACTION NEEDED NOW ON ANTI-APARTHEID LEGISLATION

Mr. RIEGLE. Mr. President, the decision of the Reagan administration to impose limited sanctions against South Africa, while very late, still represents a positive step forward. This administrative action, however, makes no less critical the urgent need for Senate passage of H.R. 1460, the Anti-Apartheid Act of 1985.

The President's action signifies an important departure from the administration's policy of quiet opposition to apartheid, and likely influenced President Botha's decision to restore citizenship to the millions of South African blacks to whom it has been denied under that country's "homelands" policy.

While this symbolic departure from the ideology underlying apartheid is noteworthy, it is not nearly enough. The United States must insist that Pretoria move more aggressively toward dismantling apartheid.

Earlier this week, our Ambassador to South Africa, Herman Nickel, addressed the need for fundamental reform in South Africa by noting that:

We have gotten beyond the point where mere statements, or even just statements of intent are adequate. Things have to be seen to be happening. Negotiations have to be seen to be starting. Some of the key features of the apartheid system have to be seen to be abolished.

I strongly agree.

The United States must make clear to the white minority Government of South Africa that normal relations between our two countries cannot continue unless and until apartheid is dismantled and the central issue of political powersharing with the nation's black majority is addressed and resolved. I believe our Government can advance that cause by clearly demonstrating our opposition to apartheid, and by stating forcefully our view that Pretoria must engage in serious reforms and begin serious negotiations with black political leaders.

The President has appealed to Members of Congress to join him in presenting a unified position against apartheid. I believe that Senate passage of H.R. 1460 is the most appropriate way to respond to that call, and, in fact, would strengthen the President's position as an advocate for genuine reform in South Africa.

The close votes which have occurred in the Senate this week on the question of moving to a final vote on the Anti-Apartheid Act, are dramatic proof of the strong desire of this body to take action to address the deteriorating situation in South Africa.

While it is true that the Executive order of the President incorporates certain of the provisions contained in the pending legislation, some important differences exist.

First, H.R. 1460 would immediately impose a ban on the importation of Krugerrands, while the President would seek a ruling from GATT before a ban is imposed.

Second, the President imposes no deadline for making further racial reforms to avoid future sanctions. H.R. 1460, however, offers important incentives for action by calling for more severe sanctions within 1 year if no significant progress is made in eliminating apartheid.

Third, administratively imposed sanctions differ qualitatively from legislatively imposed sanctions. While the former can be put into effect one day and lifted the next, the latter, once signed by the President, has the force of law, and is not so easily undone.

The overwhelming bipartisan support for the pending legislation must be permitted to demonstrate itself in the Senate, just as it was demonstrated in the House. The President should encourage congressional participation on this critical issue in order to demonstrate the strong opposition of the American people to the inhumane policy of apartheid, and to do justice to the outrage felt in this country over the injustices currently being imposed on South Africa's black majority.

It is critically important that the President and the American people, through their elected representatives in the Congress, act as one in opposing apartheid. Prompt Senate passage of H.R. 1460 will cement that partnership, and will place this country more forcefully on the side of ending apartheid in South Africa forever.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business, if not morning business is closed.

IMMIGRATION REFORM AND CONTROL ACT OF 1985

The PRESIDING OFFICER. The Senate will now resume consideration of the pending business, S. 1200, which the clerk will now state.

The assistant legislative clerk read as follows:

A bill (S. 1200) to amend the Immigration and Nationality Act to effectively control the unauthorized immigration to the United States, and for other purposes.

The Senate resumed consideration of the bill.

AMENDMENT NO. 600

Pending:

Hawkins Amendment No. 600, to extend the income and eligibility verification system under section 1137 of the Social Security Act, so as to provide for verification of immigration status in the cases of aliens applying for benefits under specified welfare and other programs.

The PRESIDING OFFICER. The pending question is amendment No. 600 of the Senator from Florida [Mrs. HAWKINS].

The Senator from Florida.

Mrs. HAWKINS. Mr. President, the amendment that is at the desk is an effort to strengthen the enforcement provisions in the immigration bill and at the same time allow the States and Federal taxpayers a portion of their hard-earned tax dollars to be put back in their own pockets.

The immigration bill we are considering today establishes the sense of Congress regarding two essential elements necessary to regain control of illegal immigration.

One of these elements is, "an increase in * * * enforcement activities of the Immigration and Naturalizations Service and of other appropriate Federal agencies in order to prevent and deter the illegal entry of aliens into the United States and the violation of the terms of their entry."

The principle that underlies my amendment is simple: a person who has broken U.S. immigration laws and entered this country illegally should not have access to U.S. Government benefits that are paid for by U.S. taxpayers.

People want to come to the United States for many reasons. We have a waiting list. Some are fleeing persecution, and those we accept without reservation, and the Indochinese boat people are a good example, and the Mariel refugees. Others are looking to improve their lives for themselves, for their children, and for their grandchildren. The basis for our laws on legal immigration is family reunification. Only a small percentage of the aliens who want to live in the United States legally can do so without a family member being here before them. The first, second, fourth, and fifth preference categories are reserved for people related to U.S. citizens or permanent residents. This means that up to 80 percent of the people who enter the United States under the preference system are related to someone who is already in the United States in a legal status. Exceptions are sometimes made for people who will make a significant contribution to American society, and so forth. Gone are the days when we can afford to receive people simply because they want to live in the United States. Today, we can only reserve that privilege for people facing persecution or threats to their lives in their homelands.

The result, plain and simple, is that today it is difficult to get a visa to live in the United States for the purpose of becoming a permanent resident or a citizen. In some cases, the wait is months; in others, it is years. For this reason, hundreds of thousands if not millions of people try to enter the United States each year illegally.

These people are looking for a better life for themselves and their children, and who can blame them. The United States is not unsympathetic to these needs. That is one of the reasons why we give billions of dollars each year to foreign countries in foreign aid. And I urge my colleagues to review the foreign aid bill country by country and the amount of money given to each one of those countries by U.S. taxpayers.

But we have an obligation first to the people of the United States, the people who we were elected to represent. People who enter the United States illegally have broken the law, and increasingly we find that when they take jobs, they take them from Americans. The workplace for the illegal alien is no longer limited to the lettuce fields or fruit orchards of the San Joaquin Valley in California. There is evidence of illegals working in factory jobs and other positions that have little relation to the low pay and poor conditions of many of agricultural jobs that have been the mainstay of the illegal work force.

This Senator's view is that even with the recent dip in the unemployment rate, too many Americans, especially young Americans, are out of work, and that it is fundamentally unfair for people who have broken our laws and entered the United States illegally to hold a job at the expense of an American. We have an obligation to Americans first, and that is what this debate over enforcement in the bill is all about.

The debate over enforcement in the bill is a great responsibility for each and every Member to reflect upon as we vote on this bill.

The basis for enforcement in this bill is employer sanctions. I endorse this approach and have done so each of the previous two times the Senate has voted on immigration legislation. The lure that draws so many illegals to the United States is clearly the hope of a job that can provide a source of income for them and their family. Employer sanctions makes it illegal for an employer to hire a person who is in the United States illegally. If the lure that draws illegals here in the first place evaporates then so will the desire to come to the United States.

There is, however, another side to this issue, and that side is welfare and other Federal payments to illegals. Whether they are working or not, many of the illegals who are in the United States qualify for various types of Federal benefits, benefits they are not entitled to, benefits that are paid for by our tax paying constituents, benefits that contribute to the Federal deficit, which we read about on a daily basis.

If it is unfair and unlawful for illegal aliens to receive certain Federal benefits, then why shouldn't the Federal Government take aggressive action to cut down on the number of illegals who get these benefits. That question is all the more relevant when the potential savings for Federal and State governments could be in the billions of dollars and when the ability to do so is readily available.

That is the purpose of my amendment, and it affects such programs as Medicaid, Unemployment Compensation, Food Stamps, and Aid to Families and Dependent Children [AFDC].

First, this provision mandates that States require all recipients for such aid, declare in writing, under penalty of perjury, whether or not the individual is a citizen of the United States, and if not a citizen of the United States, the individual would have to present the appropriate documentation from the INS showing his or her alien admission or alien file number.

Second, if the applicant is not a U.S. citizen, the State is required to use the person's alien file or alien registration number to verify with the Immigration and Naturalization Service the alien's immigration status through a system that first, uses the alien's name, file or admission number to permit efficient verification; and second, protects the alien's privacy to the maximum degree possible.

Third, if the verification check reveals that the alien is ineligible for these benefits, the benefits shall not be reduced or terminated until the alien has had an opportunity to present documents establishing their eligibility.

Fourth, and most fairly, benefits shall be terminated for aliens who are ineligible.

Fifth, the INS is instructed to have the verification system available for use by the States by October 1, 1987—not 1985, 1987.

Last, as an incentive for States to implement this system, the Federal Government would provide 90 percent matching funds to States for the non-labor costs of implementing and operating this system.

The potential savings from this legislation is incredible. The INS has done some research and conducted several pilot projects on this and has found it to be both doable and worthwhile—worthwhile to the tune of $10.7 billion if a full program of eligibility verification were required for each State. Even if the INS' estimated savings are overly optimistic—by 100 percent or even 200 percent we would still have savings in the range of $2.5 billion to $5 billion. How can anyone blink at that savings when we are talking about the deficit?

In these days of budget consciousness we all need to be looking for ways to save money—and this does it in a big way. And it does it by making sure that people who should not be getting welfare payments do not get them.

The costs of setting up and running this program are minimal especially when compared to the astronomical savings potential.

Mr. President, this is an amendment designed to provide for efficient enforcement of our current laws. It does so while at the same time providing safeguards for the privacy of the individual. And the result could be budget savings in the billions of dollars.

I believe that we need this amendment now and I urge my colleagues to give it their full support.

Mr. SIMPSON address the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, it has been a great and distinct pleasure to work with the Senator from Florida on immigration reform. She has been the most extraordinary helpmate that I have had. She is not just from a State deeply affected. Her State is the most deeply affected, obviously, by the impact of refugees and those we extend our heart and hand to and we should always be available to do that. Her State is affected by the impact of the Cuban-Haitain entrants. There is no one who pays more dogged attention to the difficulties of Florida that I know of. She corners me once in a while and says, "What are you doing about this in Florida? We are the most heavily impacted."

She considers all the issues of immigration, legal or illegal, and the issues of those seeking asylum such as the boat people, a whole array of different definitions applied to human beings that we deal with in the subcommittee. I thank her for that.

I know of the sincerity in all the things she has done on this issue and in the things she has done to assist in immigration reform.

I do know what the SAVE project is, systematic alien verification for entitlements. I think it is a remarkable program. I commend Commissioner Alan Nelson for implementing it. It is going to save this country big bucks.

My problem is, and I share it with you so that there will be no misreading of it, that three States now have demonstration projects. We have California, Colorado, and Illinois. It is making an impact. There are great savings to be accomplished in Illinois, California, and Colorado. They have chosen to do it and their State legislatures have authorized it. They have moved forward. I think that is great. I am very pleased with that.

We know what it does. The Senator has described it well. It allows the State public assistance programs and administering agencies to do a computer search of an alien's immigration status before granting that alien public assistance benefits. It relies on computerized access to the INS records.

I can tell you that those records were in disarray before Commissioner Alan Nelson came to the fore, and now the INS is becoming very adept at computer access, computerized records. It is long overdue, but they are doing a remarkable job.

Indeed, this can be applied to determine State welfare benefits or Federal benefits. The demonstration projects are being successful.

I guess what I am saying in all that laudatory commentary is that it is an important problem and the Senator addresses it skillfully. It is another evidence of our systems being gimmicked.

We know in California that when they said, "You are going to have to file this affidavit, or do this procedure before you gain public assistance," 43 percent of the applicants dropped at that point. That shows something, obviously, especially in California where there is a tremendous network of Federal, State, local, and municipal assistance to almost every kind of human being, legal or illegal. They are paying a heavy price for that. The influx of persons alone who come there solely to seek the benefits of assistance is one problem.

Another is the tremendous dependency that we find, especially among refugees, in California and Florida. That dependency rate is double and triple anything in the rest of the United States.

The potential savings are impressive.

My serious questions about the program are really these: Whether all States need it, whether the technology is actually efficient at this time to avoid mistaken denials of assistance benefits, and whether all the certain privacy issues have been resolved.

A bill similar to this amendment to amend the Social Security Act has been sent to the Finance Committee. That is another aspect: This amendment is not even a Judiciary Committee item.

I guess I am saying that I would prefer, under these circumstances and given my feeling about Federal-State relationships, that we allow the demonstration projects to continue in States that wish to do that. I think when the other States see what California, Colorado, and Illinois are coming up with in the way of just plain savings of bucks, they will be impressed by it. However, I would not want to see it come down as a Federal law at this time as part of this proposal. If we wish to do it, let us proceed with it. I would not resist allowing the States to do it. But let us continue the demonstration projects.

At this point in the debate, on this issue with this project, I will not vote in favor of the amendment and will resist it. But I do know fully what is intended. I just want to wait longer to see how the demonstration projects work in the States.

Mrs. HAWKINS. Mr. President, in working with the chairman of the subcommittee, he has been most helpful to my State and to all States with his expertise on this question. Of course, in Florida, we do have a great deal of experience in this matter.

If we adopt my amendment, however, it requires that each State sign up for the program with Federal funding absorbing 90 percent of the non-labor cost, and then that will help us to stop the movement from State to State. If a State is on a program now and finds out that a person is illegal, the alien can simply move to another State where the State is not on the program and they sign up there.

In the end, however, it is the Federal Government and it is the Federal deficit that we are always having to talk about.

I must say that the incentive is there. I have been following the programs that went into effect in the various States, with the INS asking people to sign on. The INS went into the States asking them to volunteer for an immigration verification program to show how much money could be saved in the welfare system concerning payments to illegal aliens. Some States did and some States did not. Some States may come on shortly.

It is my opinion that if we put it in Florida, that would be wonderful. But nothing prevents the people who will be denied from going to another State.

If we adopt my amendment, it will enable the Federal Government to document whether these people are illegal or not. It puts it into a national computer, a lot like the FBI has for missing children, missing automobiles, and missing whatever else.

I serve on the Agriculture Committee where we are laboring at the present moment, on food stamps. We have a terrible problem on food stamps with American citizens. It is not whether they are eligible but whether they are getting more than they need. They have to fill out all kinds of papers and they now have to say, "I am not lying on the application."

If an American citizen has to do that, I see no reason why an illegal alien should not have to go through a similar process. I hope we will have all States sign up for this program, giving them a method for the first time since I have been a Senator to be able to account for these people and as a result the States can determine whether they should give them the State benefits. It is twofold.

I cannot say enough about how shocked I think American citizens would be if they knew how easy it is for illegal aliens to get benefits, aid for dependent children, unemployment compensation, Medicaid, and food stamps, at a time when we are in rooms all over this Capitol having meetings trying to come within the budget, trying to cut a million here and a million there. I am giving the Senate an opportunity to cut billions, not millions. I think it was Everett Dirksen, a distinguished Senator who served in this body, who said, "A billion here, a billion there, and soon we are talking about real money." We are talking about real money.

I also think we are talking about a companion to employer sanctions. It is simply a reenforcement of the effort to stem the flow of illegal aliens into this country and to save a lot of the taxpayers' money as a result of evaluating an alien's eligibility for these benefits.

I certainly do not want to deny them to anyone who is eligible. We have language in the amendment when, if there is a question, we will allow the applicant to continue to receive the benefits until it can be documented once and for all that they are not. It is not unkind, it is not inhumane. It is doing Government business in a businesslike manner with the technology of the eighties. We have the ability. States have absolutely saved hundreds of millions of dollars. We have our State, Florida, going on the program shortly. We do not need to wait, as custodians of the Federal purse, while State after State finds out that this may or may not work; we better copy Illinois' program which has been fantastically successful and a model for the whole United States.

I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER (Mr. MATTINGLY). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I rise in opposition to the amendment of the Senator from Florida. The Senator from Florida I think is well intentioned for the reasons that she has outlined on the floor this morning. She is, I am sure, very well aware of the pilot project, Project SAVE, which is in place now, developed by the INS to try to address the particular issue which she is addressing with her amendment. But it is entirely premature to take what is I think a useful and constructive idea and carve it into stone, as this amendment would do if it is accepted in this legislation, should the legislation pass, because the jury is out with regard to this proposal.

I would like to ask the Senator from Florida whether this particular amendment is supported by the INS.

Mrs. HAWKINS. I am told by the INS Commissioner that the pilot projects are over. They have tested this since the late seventies in California. Illinois and Colorado have been on the pilots since 1982. Florida, which is going on the program October-November, is the first step toward a permanent program. So there are no more pilots. They have learned enough.

Mr. KENNEDY. That is not exactly the question. The question is: Does the INS support this particular amendment? Does the Department of Justice urge us to accept this amendment? Has the Attorney General indicated so or has the head of the INS indicated support for this particular amendment?

Mrs. HAWKINS. As far as my experience as a U.S. Senator, if you had to get each agency's OK before we introduced legislation on this floor, we would still be talking about missing children, which we did in 1981. It took a long time to bring the Justice Department on board on that, and even longer to get the National Center For Missing Children. I found it my experience as a U.S. Senator to do what I think is the right thing, and tell these agencies what they should be doing, let us get on with it. I do not ask agencies if they want to do this. It has been my experience they do not like to do much other than what they have been doing the last 50 years. But since this experiment has been going on in California since the late seventies, and 1982 in Illinois and Colorado and is over, the pilot is over, the program is on board, this says all States come in, we are ready. I think it is our responsibility to vote for it.

Mr. KENNEDY. I gather the answer is no because if the INS supported this particular program, thought they had sufficient information on these studies, and had the capability to do it, they would have come before the Committee of the Judiciary and indicate that.

Mrs. HAWKINS. The Commissioner of INS supports the program. There is no official administration position, which is not unique on this issue at this point in time. We, therefore, have an opportunity to set position.

Mr. KENNEDY. Is the Senator saying INS supports the amendment of the Senator from Florida? Can we get a yes or no? Because I want to move this whole debate along a little bit. And if so, could the Senator explain it to other Members for their information?

Mrs. HAWKINS. The Commissioner supports the concept.

Mr. KENNEDY. I support the concept.

Mrs. HAWKINS. Commissioner Nelson cannot mandate the program for all 50 States. That is why we are here. In answer to the Senator's question, there is no official administration position as yet on this. I imagine that would come after we see what we are going to do with the immigration bill.

Mr. KENNEDY. I gather then now that the answer is no, there is no——

Mrs. HAWKINS. Not necessarily.

Mr. KENNEDY. If I may have regular order. I am going to inquire of the Senator from Florida and I welcome getting a response to my question, Does the administration support it, the answer is no. Does the INS, which has conducted this particular study? The answer is no. I gather from the response I have just received from the Senator from Florida, that when the INS was before the Judiciary Committee with the very extensive hearings that we had on this bill, the INS was not inquired of this particular proposal. I gather that is the fact as well.

Now, I would like to ask, as a practical fact, how would this particular amendment work? I am a citizen of the United States. I am unemployed. I lost my job. My unemployment has expired. I am an Anglo. And I walk into the regional office in Boston to apply for a certain kind of welfare benefits. They give me a sheet and they ask me whether I am a citizen. I say yes, I am a citizen, and I sign it. Do I get my benefits under this amendment?

Mrs. HAWKINS. Yes.

Mr. KENNEDY. I do?

Mrs. HAWKINS. Yes.

Mr. KENNEDY. All right; now I am an Hispanic, I walk in there and they ask me whether I am a citizen of the United States. I know I am a legal resident alien but I am not a citizen, so I say no. Now what happens? Does that individual, who has children at home and a sick member of their family at home, get the benefits?

Mrs. HAWKINS. If he is legal, yes.

Mr. KENNEDY. If I am an Anglo and I say that I am a citizen and I sign it, does anybody investigate whether I am a citizen or not?

Mrs. HAWKINS. No.

Mr. KENNEDY. And if I am Hispanic and I say I am a legal resident alien, not a citizen—I am a legal resident alien—am I investigated?

Mrs. HAWKINS. If you are Hispanic and a U.S. citizen, you are not.

Mr. KENNEDY. You are not investigated.

Mrs. HAWKINS. That is right. We believe you are telling the truth.

Mr. KENNEDY. Now, if I am a legal alien, do I get investigated? I am Hispanic, I am a legal alien. Do I get investigated? I am not a citizen.

Mrs. HAWKINS. Legal?

Mr. KENNEDY. A legal alien.

Mrs. HAWKINS. Yes; your number is checked.

Mr. KENNEDY. So if you are a legal alien, you are admitted, maybe under the refugee laws, you are admitted under the legal procedures of the Immigration Act because, for example, you have married a foreigner, you are legal, you are unemployed and you are a legal, you get investigated. Is that the result?

Mrs. HAWKINS. Not all legal aliens are eligible for benefits, such as students.

Mr. KENNEDY. I am talking about welfare. I am talking about food stamps.

Mrs. HAWKINS. Neither are all citizens eligible for student loan programs.

Mr. KENNEDY. I am well aware of that. But elaborate procedures have to be followed. We are talking about the essentials of life—food.

Mrs. HAWKINS. That is true.

Mr. KENNEDY. So if I am a legal alien and I happen to be Hispanic and I happened to marry an American and I am here legally and I am unemployed and I am poor—if I am Hispanic, under the Senator's amendment, I am automatically investigated.

Mrs. HAWKINS. I do not care if you are Hispanic or Austrian or whatever. You are an alien.

Mr. KENNEDY. Even though I am here legally?

Mrs. HAWKINS. And not a citizen.

Mr. KENNEDY. But I am here legally, married an American. I am unemployed, and that individual signs the card and says, "I am a legal resident alien," but still you run the numbers through the computer. Is that right?

Mrs. HAWKINS. We check the number. You bet.

Mr. KENNEDY. You do not check the citizens, do you? You do not check an American citizen who comes in, do you?

Mrs. HAWKINS. Check them how?

Mr. KENNEDY. You do not run a computer check on a citizen.

Mrs. HAWKINS. No. There is a Social Security number; and on the application for food stamps—we did it in 1981—they say, "We are not lying. We need the food stamps." We check all their data. My State is computerized for all United States-Florida citizens.

Mr. KENNEDY. So we rely on the computers. Is that correct?

Mrs. HAWKINS. We do.

Mr. KENNEDY. Can the Senator from Florida indicate how many legal resident aliens are not on the computers in this country at this time? Can the Senator answer that for me?

Mrs. HAWKINS. I do not know of anybody who can answer that.

Mr. KENNEDY. So you do not know how many legal resident aliens are not in the INS computers, do you? What is going to happen to those people? I am a legal resident alien. They check the number, and I am not on the computer. I have children at home who are hungry. Do I get the benefit, under the Senator's amendment?

Mrs. HAWKINS. If INS cannot respond within a certain time, under the Illinois pilot project, for example, they are presumed to be legal.

Mr. KENNEDY. To get back to my other question: How many legal resident aliens, according to the INS, are not on those computers? The Senator must know that.

Mrs. HAWKINS. It does not matter, because if INS cannot respond, they are going to be able to get them.

Mr. KENNEDY. If they are not on the computer, they have to be checked by hand, under the Senator's amendment. Is that correct?

Mrs. HAWKINS. No.

Mr. KENNEDY. How are you going to check it?

Mrs. HAWKINS. INS checks to see.

Mr. KENNEDY. How does INS check?

Mrs. HAWKINS. INS checks through computers.

Mr. KENNEDY. What if they are not on the computer?

Mrs. HAWKINS. If they are not on the computer, then they have the opportunity to come down in, get their benefit.

Mr. KENNEDY. Who comes down in?

Mrs. HAWKINS. The alien.

Mr. KENNEDY. Comes down in where?

Mrs. HAWKINS. Gets a chance to come down, prove that it is legal.

Mr. KENNEDY. A chance?

Mrs. HAWKINS. An opportunity. Just like a citizen comes down, after we verify all the data on citizens.

Mr. KENNEDY. The Senator says they check on a citizen——

Mrs. HAWKINS. They check on their data.

Mr. KENNEDY. What is the other data?

Mrs. HAWKINS. If he is unemployed, if he qualifies for AFDC, has 10 children or has 2.

Mr. KENNEDY. How many people go through the system now who fall into that category of not being a citizen and fall into the resident alien category? Clearly, if they are undocumented or are illegal, it is difficult to think that they would go through this process. How many go through it at the present time?

Mrs. HAWKINS. Through what system?

Mr. KENNEDY. Through the welfare system in the country, that we are going to have to prove through the INS that they are not on the computers and INS will have to check by hand.

Mrs. HAWKINS. We do not know, because we do not check it.

Mr. KENNEDY. Can the Senator come back to a response to a question, and that is how many now, according to INS, are resident aliens, legal resident aliens in the United States, who have been let in here as a matter of laws passed in the House and the Senate, signed by the President? They are legal and they are not on those computers. Can the Senator give me any idea of what that number could be?

Mrs. HAWKINS. It does not matter if they can——

Mr. KENNEDY. Can you answer the question? Is the answer that you do not know or do you have a number?

Mrs. HAWKINS. It does not matter.

Mr. KENNEDY. Tell me how many.

Mrs. HAWKINS. We do not know how many.

Mr. KENNEDY. Well, I can help the Senator on that.

Mrs. HAWKINS. This would certainly help.

Mr. KENNEDY. I can help the Senator on that issue, because as of March 25, 1985, Harlin Kiester was the chief of the index systems section, within the Office of Information Systems, Immigration and Naturalization Service, in Washington, DC, and has been an employee for 6 years of the INS. He is chief of the index systems section and is thoroughly knowledgeable about the MIRAC computer system. I will include in the RECORD his entire statement.

He said:

Even if the Government were to modify the program—

The meaning of that word will become self evident—

To retrieve this type of information—

The kind of information the Senator from Florida is talking about—

The data generated by such would be erroneous and misleading. William J. Polli, Chief, Records Operations Section, Records Management Branch, INS, has informed me that there are currently 6.2 million records that have not been entered into the system. This backlog has been increasing steadily since 1979. Even with his personnel attempting to key in the current information, along with a small amount of the backlog, they are unable to keep pace with the current records which are received at a rate of approximately 1.4 million per year. Therefore, even if the program were modified, there is no time frame which contains complete records and any search would yield inaccurate statistics.

If the Senator from Florida wants to offer an amendment to the appropriations bill to ensure that INS can get the funds to get this kind of information, put me on as a cosponsor.

I have worked with the INS over a period of years, and it is absolutely disgraceful the lack of support this body gives to them in terms of modernizing their information systems.

I have fought as a member of the Judiciary Committee and as chairman of the Judiciary Committee to give them adequate resources to do the job. But whenever we come on the floor of the U.S. Senate, the reply is, give them more border patrol but do not give the people working in service programs of the INS the kind of support they need. I would welcome the opportunity to work with the Senator from Florida to develop an informational base within INS to do the job she wants. I shall work with the Senator from Florida, I shall work with the chairman of the subcommittee to have the kind of hearings and fashion the kind of program that can achieve the objective of the Senator from Florida. But, Mr. President, I just fail to see how this amendment can be effective under existing circumstances.

Instead, I think it opens enormous opportunities for incredible abuses. I fail to see, with the people around this country who are interested in defrauding the Government because they are undocumented aliens and they are trying to cheat on the system, why they just would not write on their little card that they are a citizen so they do not get investigated.

The Senator from Florida has indicated that. You walk in, you are an undocumented alien, you are trimming on the system, you walk in there and fill that card out and say, "I am a citizen." So you get your benefits, no questions asked. It just is, I think, an ineffective way and subject to all kinds of abuse.

Mr. President, we can take more time going through this in terms of its particular application and how the procedure will work, but I think on the basis of this debate, it has not the support of the INS at this time, it has not the support of the Department of Justice. The fact remains that those who have the primary responsibility for the computer system say they cannot even keep up with the current backlog, they are well behind on legal and resident aliens. I think the system at this time is unworkable.

Mr. President, I ask unanimous consent to have printed in the RECORD a statement by Harlin M. Keister, Jr.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

DECLARATION OF HARLIN M. KEISTER, JR.

I, Harlin M. Keister, declare and say:

1. My name is Harlin M. Keister, Jr. and I am Chief of the Index System Section, within the Office of Information Systems, Immigration and Naturalization Service [INS], Central Office, 425 I Street, N.W., Washington, D.C. 20536. I have been an employee of INS for 6 years.

2. In my capacity as Chief of the Index Systems Section I am thoroughly knowledgeable about the MIRAC computer system.

3. MIRAC is programmed to retrieve individual files after an A number, or name and date of birth has been entered onto the system. The current program will not permit the user to enter the dates 1967 and up and then receive instructions to search for apprehensions within a set time frame.

4. In order for MIRAC to accomplish a search of this type the program would have to be modified. It would cost approximately $4,500 to modify the program in-house, to monitor the program's execution, and computer resource expenses. It would cost approximately $9,000 if the Government were to hire a contractor for this purpose. Additionally, it is estimated that it would take approximately 1 month to modify the program in-house and produce the requested statistics. It would take much longer than a month for a contractor to produce the statistics.

5. Even if the Government were to modify the program to retrieve this type of information, the data generated by such would be erroneous and misleading. William J. Polli, Chief, Records Operations Section, Records Management Branch, INS, has informed me that there are currently 6.2 million records that have not been entered into the system. This backlog has been increasing steadily since 1979. Even with his personnel attempting to key in the current information, along with a small amount of the backlog, they are unable to keep pace with the current records which are received at a rate of approximately 1.4 million per year. Therefore, even if the program were modified, there is no time frame which contains complete records and any search would yield inaccurate statistics.

I declare and swear under the penalty of perjury that the foregoing is true and correct.

HARLIN M. KEISTER, JR.,
Chief, Index System Section.

Mr. KENNEDY. Mr. President, I shall welcome the chance to work with the Senator from Florida on a better approach. At this time, Mr. President, I move to lay the amendment of the Senator from Florida on the table, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay the amendment of the Senator from Florida on the table. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Mississippi [Mr. COCHRAN], the Senator from Maine [Mr. COHEN], the Senator from Minnesota [Mr. DURENBERGER], the Senator from North Carolina [Mr. EAST], the Senator from Utah [Mr. GARN], the Senator from Kansas [Mrs. KASSEBAUM], and the Senator from Vermont [Mr. STAFFORD], are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Kentucky [Mr. FORD], the Senator from Hawaii [Mr. MATSUNAGA], and the Senator from Arkansas [Mr. PRYOR], are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 31, nays 59—as follows:

[Rollcall Vote No. 178 Leg.]

YEAS—31

Andrews	Harkin	Mitchell
Biden	Hart	Moynihan
Chafee	Hatfield	Packwood
Chiles	Inouye	Pell
Cranston	Kennedy	Proxmire
Danforth	Kerry	Sarbanes
Dodd	Lautenberg	Simon
Eagleton	Leahy	Simpson
Evans	Levin	Weicker
Gore	Mathias	
Gorton	Metzenbaum	

NAYS—59

Abdnor	Gramm	Nickles
Armstrong	Grassley	Nunn
Baucus	Hatch	Pressler
Bentsen	Hawkins	Quayle
Bingaman	Hecht	Riegle
Boren	Heflin	Rockefeller
Boschwitz	Heinz	Roth
Bradley	Helms	Rudman
Bumpers	Hollings	Sasser
Burdick	Humphrey	Specter
Byrd	Johnston	Stennis
D'Amato	Kasten	Stevens
DeConcini	Laxalt	Symms
Denton	Long	Thurmond
Dixon	Lugar	Trible
Dole	Mattingly	Wallop
Domenici	McClure	Warner
Exon	McConnell	Wilson
Glenn	Melcher	Zorinsky
Goldwater	Murkowski	

NOT VOTING—10

Cochran	Ford	Pryor
Cohen	Garn	Stafford
Durenberger	Kassebaum	
East	Matsunaga	

So the motion to lay on the table the amendment (No. 600) was rejected.

Mrs. HAWKINS. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. HEINZ. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 602 TO AMENDMENT NO. 600

(Purpose: To express the sense of the Senate regarding the separation of Social Security Trust Funds from the Unified Federal Budget)

Mr. HEINZ. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

Mr. KENNEDY. Regular order, Mr. President.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. HEINZ], for himself, Mrs. HAWKINS, Mr. SPECTER, Mr. SASSER, Mr. ABDNOR, Mr. ANDREWS, Mr. DENTON, Mr. RIEGLE, Mr. DECONCINI, and Mr. WILSON, proposes an amendment numbered 602 to amendment numbered 600.

Mr. HEINZ. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

Mr. WARNER. Objection.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue to read the amendment.

The assistant legislative clerk read as follows:

At the end of the amendment, add the following:

SEC. . POLICY TOWARD SOCIAL SECURITY TRUST FUNDS.

(a) FINDINGS.—The Congress finds that—

(1) public confidence in the Social Security system has been undermined by the acrimonious debates over deficit reduction;

(2) including Social Security Trust Funds in the Unified Federal Budget masks the true size of the federal deficit;

(3) Social Security is wholly funded by a separate payroll tax, is running a surplus, and does not contribute to the federal deficit;

(4) it is time to protect the integrity of both the Social Security program and the federal budget process by separating the two; and

(5) removing Social Security Trust Funds from the Unified Federal Budget will enable Congress to proceed with the responsibility of solving our massive budget deficit.

(b) POLICY.—It is the sense of the Senate that Congress should separate the Social Security Trust Funds from the Unified Federal Budget at the earliest possible date.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. DOMENICI. I object.

The PRESIDING OFFICER (Mr. RUDMAN). Objection is heard.

The assistant legislative clerk resumed the call of the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HEINZ addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, in an effort to try to expedite matters on this bill, I am going to withdraw my amendment temporarily. I will be offering it later in the day. It is a sense-of-the-Senate amendment that the Social Security Trust Funds be separated from, as President Reagan has requested, the unified Federal budget. I will be offering that amendment later on today. So, Mr. President, the yeas and nays have not been ordered on my amendment, and I therefore withdraw my amendment.

The PRESIDING OFFICER. The Senator has that right. The amendment is withdrawn.

AMENDMENT NO. 603

(Purpose: To make the effective dates of certain verification procedures subject to findings in a GAO report)

Mr. KENNEDY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY], proposes an amendment numbered 603:

At the end of subsection (c) of the amendment, add the following new paragraph:

(4) Such sums as may be necessary are authorized for the Immigration and Naturalization Service to carry out the purposes of this section.

Mr. KENNEDY. Mr. President, the purpose of this amendment is to provide sufficient authorization so that we can ensure resources are available to make sure that INS computers are adequate to respond to the demands of this amendment. We will have time hopefully in the Judiciary Committee and in the Immigration Subcommittee, working with the Senator from Florida, to provide a figure that is realistic and we will make our efforts with the Appropriations Committee as well. But it does seem, now that the Senate has decided to go forward with this approach, that we ought to provide sufficient resources to obtain accurate statistics to achieve the objectives of the amendment. I have talked with the Senator from Florida. She appears to be agreeable to this proposal, as is the chairman of the Immigration Subcommittee, the Senator from Wyoming. I hope the Senate will accept the amendment.

Mrs. HAWKINS. I agree.

Mr. SIMPSON. Mr. President, that is quite acceptable to this floor manager.

Mr. KENNEDY. Finally, Mr. President, I would like to ask the Senator from Florida whether it is her intention and view that under this program if an alien applicant—a lawful permanent resident alien—is not found to be included in the INS computer, that within 10 days that person should automatically receive the benefits to which he may be entitled.

In other words, simply because his name may not appear in the INS computer, he won't be penalized or denied benefits he is entitled to?

Mrs. HAWKINS. Mr. President, I appreciate the concerns raised by the Senator from Massachusetts. The INS has informed me that it has been their experience in States with which they have agreements to presume that the alien is qualified if after a reasonable period of time the INS is unable, for one reason or another, to respond. I agree that this is a practical and useful approach to ensure that no one is denied a benefit or has their benefits unduly delayed as a result of the shortcomings of INS. It is my view that this is a reasonable precaution, and I hope and fully expect the INS to continue to encourage States to accept these kinds of reasonable precautions to ensure that people are not harmed as a result of a problem with INS or its data base.

Mr. KENNEDY. Mr. President, I would also like to share with the Senate an analysis and comment on project SAVE prepared by the Mexican American Legal Defense and Educational Fund. I ask unanimous consent that it be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND,
Washington, DC, March 13, 1985.

Hon. EDWARD M. KENNEDY,
U.S. Senate, Washington, DC.

DEAR SENATOR KENNEDY: I am enclosing a copy of a letter sent to INS Commissioner Alan Nelson regarding MALDEF's position on Project SAVE (Systematic Alien Verification for Entitlements). As you may recall, Commissioner Nelson indicated during his testimony on the INS Budget Hearings that MALDEF had participated in a press conference and supported the implementation of Project SAVE in Illinois.

In consulting with our Chicago office, a MALDEF attorney did attend the press conference, but did not participate in it, nor did MALDEF endorse the project. Moreover, it is clear that Project SAVE raises a number of problems and questions which are detailed in our letter to Commissioner Nelson.

Therefore, I would like to request that our letter to the Commissioner be included in the record of INS Budget Oversight Hearings. Any inquiries you could make regarding the questions raised by our letter would also be appreciated.

Thank you for your attention to this matter. If you have any further questions, please feel free to give me a call.

Sincerely,

HELEN C. GONZALES,
Associate Counsel.

MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND,
Washington, DC, March 13, 1985.

Commissioner ALAN C. NELSON,
Immigration and Naturalization Service, Washington, DC.

DEAR COMMISSIONER NELSON: Recently Richard Fajardo, a MALDEF staff attorney, had occasion to hear your presentation during the INS budget oversight hearings before Senator Simpson's Subcommittee on Immigration and Refugee Policy. During your presentation you indicated that MALDEF had participated in a press conference in support of the announced implementation of Project SAVE (Systematic Alien Verification for Entitlements) in Illinois.

I have consulted with our Chicago office and have learned that at no time has MALDEF endorsed Project SAVE. Thus, I am writing to clarify MALDEF's position for the record. First, while we did attend the December, 1984 press conference, MALDEF did not participate in it. Moreover, in a short meeting after the conference, our Chicago attorney indicated to Illinois and INS officials that we would not support Project SAVE since implementation of the program has resulted in the denial of benefits to legal resident aliens fully entitled to such benefits. Finally, the project SAVE program appears to be in violation of an existing court order issued in *Roman-Ramirez* v. *Bernardi*, 82-C-2539 (1982).

Allow me to provide further details. In 1982, the INS began a prototype of Project SAVE in Illinois. The Illinois' Department of Labor (Ill DOL) was requested to refer the names of non-citizen applicants for unemployment compensation benefits to INS for verification of the applicants' immigration status. Aliens whose records could not be found within the INS computers were requested to appear at INS offices to clarify their status. Meanwhile, the Ill DOL denied unemployment benefits to aliens whose status were in question.

As a result of these practices, numerous permanent resident aliens, fully entitled to benefits, were being denied such benefits. MALDEF filed a class action suit in federal court on behalf of such immigrants. Roman-Ramirez, supra. A court order was issued which required:

(1) Benefits will not be denied an alien unless the unemployment claims adjudicator receives written confirmation from the INS that the green card, or other identification presented, is counterfeit or belongs to someone other than the claimant;

(2) If the INS delays in providing a written response, benefits will be issued in the same amount of time as for any other claimant, i.e., U.S. citizen or permanent resident.

(3) Under no circumstances will claimants be required to obtain INS verification on their own, i.e., the burden is on the Ill DOL and the INS to determine whether or not the alien is undocumented, hence ineligible for benefits.

The Court also ordered that Ill DOL provide to INS a list of persons who had been denied unemployment compensation benefits. The INS was required to reverify its records for all persons designated, and such review was to be made "in the best available method and . . . *will not rely exclusively on its computer check without a further manual review of its files in the Chicago District Office, as well as a review of the appropriate INS Office which would have the most accurate information for each applicant.*" *Roman-Ramirez, supra.* Agreed Order, Judgement and Decree (Oct. 1,1982) (emphasis added). A reverification of records for 600 aliens who had been denied unemployment benefits and who failed to appeal their denials indicated sixty two aliens (10 percent) had been improperly classified as undocumented aliens, and so were improperly denied benefits.

A manual search of INS records is especially important because, as a GAO report found, it is not clear whether persons for whom no computer records are found or who fail to appear at INS offices to clarify their immigration status are actually undocumented. A 1979 GAO review of a California Alien Verification Program made the following findings:

The INS offices in California initially identified 24 illegal aliens from local records and 112 aliens who "failed to appear" for a total of 136 who were thus denied benefits by the State of California. INS headquarters personnel, at our request, researched additional records maintained in Washington, D.C. and the following was found.

Of the 24 illegal aliens, 6 were determined to be legal, 3 illegal, and no records were found for 15.

Of the 112 aliens who "failed to appear," 44 were determined to be legal, 2 illegal, and 66 with no record.

In summary, out of a total of 136 aliens who were denied public assistance benefits after a search by INS of local records in California, 50 were later determined by INS to be legal, 5 illegal, and 81 with no records through a search of additional records maintained in Washington, DC.

INS—Records Management Problems: Hearings Before the Subcommittee on Information and Individual Rights of the House Committee on Government Operations, 96th Cong., 1st Sess. 578-79 (1979) (Appendix 25—Correspondence on GAO review of California's Alien Verification Program. Letter dated November 7, 1979 from GAO to the Subcommittee) (emphasis in the original).

The GAO report on the California project indicates that there is a strong likelihood that a substantial number of persons for whom no immigration records can be found are in fact legal residents. Thus, it is wrong to assume that persons whose records fail to appear in the INS computer files and who fail to appear before INS officials to clarify their status are undocumented aliens.

Unlike the Roman-Ramirez Court Order which requires a reverification, including manual searches, of aliens who were misidentified as undocumented aliens, Project SAVE only provides for a search of INS computer records. Where a record of immigration status is not found the alien is asked to appear before INS offices to clarify his or her status. This appears to place the burden on the individual to prove or clarify his or her status. SAVE does not provide for manual searches for records not found in INS computer files, although such searches may locate the records of many individuals and prevent delays or denials of benefits to persons eligible for them.

Let me also restate for the record that MALDEF did not participate in the December, 1984 press conference in which Governor Thompson and INS officials announced the implementation of Project SAVE. MALDEF's Chicago office was invited to attend the press conference and was told that Illinois and INS officials would announce a program to implement the 1982 Roman-Ramirez court order. However, the press conference presentations described a project which did not appear to implement the Roman-Ramirez court order. We informed Illinois and INS officials that we were not satisfied with the presentations made and we would have to investigate the program further.

It is quite apparent that Project SAVE will result in the delay or denial of benefits to many legal resident aliens, including many Hispanics. In addition, to the extent that only a small percentage of persons for whom records could not initially be located are later found to be undocumented aliens, the savings to participating states are overstated or will be a result of withholding benefits to persons who are legally entitled to such benefits.

In addition, the program raises other questions not elaborated above, including privacy issues (i.e., the propriety of gathering information about aliens and allowing state agencies access to such information) and discrimination in implementation (e.g., to what extent are all entitlement applicants required to submit to the immigration status checks, or are status checks limited to aliens and naturalized citizens, aliens only, or only certain ethnic minorities, etc.).

In closing, let me reiterate that MALDEF did not participate in the Chicago press conference, and we have not endorsed Project SAVE.

Sincerely,

HELEN C. GONZALES,
Associate Counsel.

PROJECT SAVE

The INS has initiated a Systematic Alien Verification for Entitlements program (project SAVE) to identify undocumented aliens seeking state and federal entitlements or services. However, a number of problems have surfaced in implementation of various pilot programs, in that some permanent resident aliens and naturalized citizens entitled to benefits were being denied such benefits.

1. What is Project SAVE?

The INS has started a new operation to identify undocumented aliens: Project SAFE. The INS will grant state agencies access to INS computer records. When a person applies for social services, such as unemployment compensation, AFDC, medical care, etc., a persons name is compared with INS computer records to check the applicants' immigration status.

The INS is promoting the program as a way for state governments to save money, since the state will not have to provide benefits to ineligible undocumented aliens.

2. How are undocumented aliens identified?

When a person applies for benefits, state personnel will access INS computer records and check the applicant's immigration status.

If no record of lawful U.S. entry exists in the INS computers, the person is sent a letter asking them to appear at the INS office to clarify their immigration status.

Persons for whom no record is found and who "fail to appear" to clarify their status are assumed to be undocumented and are denied benefits or social services.

3. I understand that because INS records are incomplete, legal residents have been incorrectly identified as undocumented, and so, are denied benefits.

A. You indicate in your testimony, that about 35 million persons are entered into you computer records. What kind of information is kept in these computer records?

Does this include only legal resident aliens? If so, does it include all legal resident aliens? If not, what percentage of aliens are included?

Do these records include aliens and naturalized citizens? If not, how are problems or questions regarding a naturalized citizen's status resolved?

B. What is the earliest date of entry recorded in INS computers?

Apparently, INS computer records do not include data for persons who legally entered the United States prior to 1972 (approximately). In any case, persons who entered in 1960 would not be in the INS data base.

C. What is the most recent date of entry recorded in the INS computers?

The names of persons who legally entered the United States most recently are not in the INS computer. Apparently, it takes about 1 year to enter such data in INS records.

4. As a result of such gaps in INS computer records, weren't a number of legal residents erroneously identified as undocumented and thus disqualified from receiving benefits to which they were entitled?

Yes. For example, in Illinois a pilot SAVE program to identify undocumented aliens who were applying for unemployment compensation benefits resulted in delays or denials of such benefits to legal resident aliens. A manual reverification of records for about 600 aliens who had been denied unemployment benefits and who failed to appeal their denials indicated sixty two aliens (10 percent) had been improperly classified as undocumented aliens, and so were improperly denied benefits.

5. In 1979, a GAO review of a California alien verification program found the following:

That of 24 aliens identified as illegal by INS, a further record search found that 6 were legal, 3 illegal and no records were found for 15.

A similar reverification of records for 112 persons who had "failed to appear" to clear up their immigration status, found that 44 were legal, 2 illegal, and 66 with no record. Unfortunately, all 112 had been denied benefits prior to the additional record search.

Can you assure this subcommittee that INS is conducting the additional record searches necessary to protect legal residents?

Note.—This GAO report suggests that there is a strong likelihood that a substantial number of persons for whom no immigration records can be found are in fact legal residents.

Thus, it appears erroneous for the INS to assume that persons for whom records do not appear in the INS computer files and who fail to appear before INS officials to clarify their status are undocumented.

5. Didn't an Illinois Federal court require the INS to provide for manual searches of records not found in the INS computer files?

Yes. In Roman-Ramirez versus Bernardi, the INS identified a number of persons who applied for unemployment compensation benefits as undocumented. The court required the INS to reverify its records for all persons denied benefits, and the review was to be made "in the best available method and . . . will not rely exclusively on its computer check without further manual review of its files in the Chicago District Office, as well as a review of the appropriate INS Office which would have the most accurate information for each applicant."

After the INS instituted the Federal court-ordered procedure, it was found that about 10 percent of those said to be undocumented were in fact documented aliens (62/600).

6. How did you calculate the cost saving to the country of some $10 billion?

I understand INS estimated cost savings of $58 million in unemployment compensation benefits to the State of Illinois, is that correct? If so, how were these cost savings calculated?

INS probably made estimates as follows:

(1) Did one week survey in an area with heavily concentrated Hispanic population.

(2) Estimated the number of persons identified as undocumented.

(3) Assumed each would receive the maximum amount of benefits.

(4) Extrapolated cost over a 1-year period (unemployed persons only receive 26 weeks of benefits.)

(5) Extrapolated similar savings to all Illinois offices.

Problems with estimates:

(1) Not all communities will have the same number of undocumented aliens.

(2) Not all persons will be entitled to same amount of benefits.

(3) Persons can only receive benefits for 26 weeks.

QUESTIONS ON THE SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS PROGRAM (SAVE)

(1) Please list all state, local, and federal agencies which are currently participating in systematic alien verification through use of computer matching and cross-indexing, including all cases involving so-called "routine use exceptions" to the Privacy Act.

In verifying eligibility of applicants for entitlements, exactly what information does INS release to state and local agencies?

(2) INS estimates that cost avoidances of $10.708 billion are potentially achievable through nationwide implementation of the SAVE Program.

Please explain estimates used by INS analysts in calculating cost avoidances related to the SAVE Program, specifically with respect to the average dollar amount per unentitled user, assumed rates of entitlement usage by undocumented immigrants, and estimates of the number of undocumented aliens residing in the U.S.

(3) It is our understanding that SAVE verification processes depend entirely on state and local agencies' access to applicants' "A" file numbers.

Please explain in detail the status of INS automated "A" files, and their use in the SAVE Program, specifically with respect to;

Estimated totals of aliens who have "A" numbers which, due to pre-1972 or post-1984 issuance dates, reportedly may not be included in INS' automated files, nationally, and for each District Office.

Numbers of permanent resident aliens whose "A" numbers were not available through computer search, but who have been subsequently determined to be eligible for entitlements after manual searches of files at the National, office, District office, or port-of-entry.

Status of asylees, refugees, and other aliens residing in the United States "under color of law" do not have INS "A" numbers. In these cases, how do SAVE operations in various locales alternatively verify these legally eligible aliens' status?

(4) Reports on SAVE operations indicate that, at least in some instances, non-citizens whose "A" numbers cannot be located through computer checks must, upon appearance at INS District Offices, file a G-641 information request form to verify their eligibility for entitlements.

Please provide information on the use of G-641 forms in SAVE operations, the average duration of G-641 information searches nationally and by District Office, and the District Offices' policies regarding G-641 fee collection related to SAVE verification requests.

(5) INS reports that, in pilot projects testing SAVE operations, approximately 90 percent of applicants referred to INS District Offices because of questionable eligibility status "failed to appear."

Are referred aliens who fail to appear denied entitlements in all cases? Please provide all available information on the rates of such failures of appearance among referred aliens, as well as INS estimates of the number of such aliens who are determined not to be eligible for entitlements. In addition, please provide any and all data on the number of "failed to appear" aliens who may be eligible for such entitlements, but who decide not to follow through with the verification process.

(6) Descriptions of the SAVE program suggest that only those applicants who identify themselves as non-citizens go through the verification procedures.

Are either state or INS officials afforded the discretion to require proof of citizenship of applicants who identify themselves as citizens? Please provide information on the number of citizens, or applicants who identify themselves as citizens, who have gone through the SAVE verification procedures.

The PRESIDING OFFICER. Is there further discussion of the amendment submitted by the Senator from Massachusetts? If not, the question is on agreeing to the amendment.

So the amendment (No. 603) was agreed to.

The PRESIDING OFFICER. The question before the Senate is on the amendment offered by the distinguished Senator from Florida, as amended by the amendment offered by the distinguished Senator from Massachusetts. The yeas and nays have been ordered.

Mrs. HAWKINS. Mr. President, I ask unanimous consent that the order for the yeas and nays be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on the amendment offered by the distinguished Senator from Florida, as amended by the amendment offered by the distinguished Senator from Massachusetts.

The amendment (No. 600), as amended, was agreed to.

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 604

(Purpose: To terminate provisions relating to the unlawful employment of aliens if the Comptroller General reports that certain adverse conditions have resulted from carrying out such provisions)

Mr. KENNEDY. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] proposes an amendment numbered 604.

Mr. KENNEDY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 118, line 14, strike out "five" and insert in lieu thereof "three".

On page 119, line 11, strike out "five" and insert in lieu thereof "three".

On page 121, between lines 6 and 7, insert the following:

(d) TERMINATION DATE FOR EMPLOYER SANCTIONS.—(1) The provisions of section 274A of the Immigration and Nationality Act shall terminate 30 calendar days after receipt of the last report required to be transmitted under subsection (b), if—

(A) the Comptroller General determines, and so reports in such report, that a widespread pattern of discrimination has resulted against citizens or nationals of the United States or against eligible workers seeking employment, the sole result of the implementation of employer sanctions; and

(B) there is enacted, within such period of 30 calendar days, a joint resolution stating in substance that the Congress approves the findings of the Comptroller General contained in such report.

(2) Any joint resolution referred to in clause (B) of paragraph (1) shall be considered in the Senate in accordance with subsection (f).

(e) EXPEDITED PROCEDURES IN THE HOUSE OF REPRESENTATIVES.—For the purpose of expediting the consideration and adoption of joint resolutions under subsection (d), a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(f) EXPEDITED PROCEDURES IN THE SENATE.—(1) For purposes of subsection (d), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated.

(2) Paragraphs (3) and (4) of this subsection are enacted—

(A) as an exercise of the rulemaking power of the Senate and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of joint resolutions referred to in subsection (d), and supersede other rules of the Senate only to the extent that such paragraphs are inconsistent therewith; and

(B) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner as in the case of any other rule of the Senate.

(3)(A) If the committee of the Senate to which has been referred a joint resolution relating to the report described in subsection (d) has not reported such joint resolution at the end of the ten calendar days after its introduction, not counting any day which is excluded under paragraph (1) of this subsection, it is in order to move either to discharge the committee from further consideration of the joint resolution or to discharge the committee from further consideration of any other joint resolution introduced with respect to the same report which has been referred to the committee, except that no motion to discharge shall be in order after the committee has reported a joint resolution with respect to the same report.

(B) A motion to discharge under subparagraph (A) of this paragraph may be made only by a Senator favoring the joint resolution, is privileged, and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the joint resolution, the time to be divided equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(4)(A) A motion in the Senate to proceed to the consideration of a joint resolution shall be privileged. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the Senate on a joint resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(C) Debate in the Senate on any debatable motion or appeal in connection with a joint resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the joint resolution, except that in the event the manager of the joint resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a joint resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(D) A motion in the Senate to further limit debate on a joint resolution, debatable motion, or appeal is not debatable. No amendment to, or motion to recommit, a joint resolution is in order in the Senate.

Mr. KENNEDY. Mr. President, one of the central objections that has been raised again and again over this legislation—both during the extensive subcommittee hearings we have conducted over the past 4 years, as well as during the debates in both the Senate and House of Representatives—is the concern that the new employer sanctions authorized in this bill might result in job discrimination against certain American workers.

I stress the word "might," because we really don't know, and it is certainly not intended nor anticipated by the sponsors of this legislation. But the fears are real, and they are based upon bitter experience by many in our society—particularly by our Hispanic and Asian citizens. These are fears that I believe we simply cannot ignore.

The amendment I have sent to the desk is an effort to address these fears and to assure that Congress will act to rectify employer sanctions if a widespread pattern of job discrimination should develop in their implementation.

This amendment simply offers a guarantee, built into the statute, that Congress can act expeditiously to rectify any unintended discrimination. If, contrary to all the protections and intentions contained in the bill, new job discrimination does develop—and not just a few isolated cases of discrimination, but a widespread pattern of discrimination—then Congress can sunset employer sanctions.

If such a pattern of discrimination were to develop, I can't imagine that Congress wouldn't want to act. But unfortunately, Mr. President, the history of immigration laws tells us that once Congress acts on immigration, it is often decades before it acts again. And when there has been the potential for discrimination in our immigration laws, we know that discrimination has developed.

I spelled out the history of that in my opening statement 2 days ago.

So in fairness to those minority members of our society—who will surely be the most directly affected by the provisions of this legislation—we ought to deal with their fears of discrimination now, and not wait until after they develop and without any easy statutory mechanism to deal with them.

My amendment offers this assurance and a statutory guarantee that Congress can easily address the issue of discrimination should it arise.

It simply requires the General Accounting Office to undertake an independent study each year of the implementation of employer sanctions to determine if a pattern of discrimination has resulted. At the end of the third year, if the GAO finds that a widespread pattern of discrimination has developed over that period, it makes that determination to Congress.

Then Congress—both Houses—has the opportunity, through the expedited 30-day procedure, to adopt a joint resolution stating in substance that it approves the findings of the GAO, whereupon employer sanctions are terminated until Congress reenacts them with proper safeguards.

If the GAO does not find a pattern of discrimination, or if Congress disapproves of the GAO findings—or even ignores them—then employer sanctions will continue.

But, Mr. President, it is hard for me to imagine either the Senate or the

House failing to exercise the expedited parliamentary procedures offered in this amendment if the GAO does find a widespread pattern of discrimination. This legislative mechanism is the minimum assurance we should be willing to provide to those in our society who are understandably worried over the implementation of employer sanctions.

We dealt with this issue in the Judiciary Committee during the markup. This type of approach has been offered by me and other members of the Judiciary Committee a number of times. We have modified our approach to consider the various objections to previous amendments.

I have offered this type of amendment on each immigration bill that has been before us. It seems to me that it provides the minimum guarantee we should be willing to make.

I have had a chance to talk this over with the floor manager of the bill. He is very familiar with the approach that has been included in this amendment, and I welcome his observations about it.

Mr. SIMPSON. Mr. President, it is important for me to be able to say succinctly that this is quite acceptable to me, and let me explain why, in this context.

We all know that employer sanctions is the very key to immigration reform. There is no immigration reform, at least on the humane basis that Senator KENNEDY and I have tried to do it, without employer sanctions. No one has been more concerned about the possibility of employer sanctions perhaps causing new employment discrimination. Every one of us has been deeply concerned about that. That has been my abiding concern for 6 years. It was the abiding concern of the Select Commission. We all share that view.

We have examined that single issue in more than a dozen hearings which the subcommittee has held in the past 4½ years on that point alone. We examined the record of employment discrimination in the other Western countries of the world which have employer sanctions laws, and most do. We have read the GAO report which says that they do not work, and they do not work when they are just the cost of doing business. They work when they are tough, hard, and serious, and that is what we have in S. 1200; a cease and desist order, civil penalties, and up to $2,000 for the first offense, up to $5,000 for the second offense, up to $10,000 for the third offense. Finally, the egregious person who never wakes up and smells the coffee is faced with possibly a criminal sentence. Criminal sentences do not come in until you get to the repeat pattern or practice offender. That is the key to employer sanctions.

We never did really find substantial evidence that this bill alone would in any way increase employment discrimination; yet, it remains a well-founded concern even in my bosom. Nonetheless, we included in the bill provisions which assure close monitoring.

I hope everyone is aware of how much time we spent on that issue in trying to determine whether there was some kind of new employment discrimination.

By this bill, we involve the Equal Employment Opportunity Commission, the U.S. Commission on Civil Rights, and the Department of Justice in this monitoring process that is in S. 1200, as well as the GAO watchdog agency.

Congress is required to hold hearings within 60 days of the receipt of any report of a pattern of employment discrimination resulting from employer sanctions—and to discuss the legislative remedies. I think that is the essence of this amendment. It is the important part of it. We are looking at discrimination based solely on employer sanctions; and if that is there, we want to do something. It is not even quite a sunset. There is an expedited process which will be carried out, and I think it is important to know that it is a parliamentary process and we will do it.

Senator KENNEDY and I have spent a great deal of time trying to assure nondiscrimination. I believe it was full and very adequate protection against new employment discrimination. However—and this is the reason why I support and will accept the amendment—I am fully aware of the fears, rational or irrational, of some, especially in the Hispanic community and the civil rights community, that somehow new discrimination might occur. That is not my desire or my intent or my objective.

Again, we are not talking about discrimination based on alienage. That will be visited at a later part of the day. But I do not believe that immigration reform legislation is a proper vehicle for civil rights legislation, and that is what did occur in the House and the conference committee last year. There were provisions presented then about employment and discrimination in EEOC and a new agency of Government fashioned on the NLRB and those things which I do not think were appropriate because they never even passed when we debated the civil rights laws of 1964 and 1972.

So, I think Senator KENNEDY's amendment provides the protections that are sought by all of us concerned about discrimination without inserting a whole new concept of civil rights legislation into the bill. I deeply appreciate that, because I think that would be a tough one to hurdle if it got in there. I think Senator KENNEDY shares some of that concern, that we need not go to a new agency of Government. If that happens, I, and I think everyone else in this Chamber, believe that we would want to have a swift and expedited manner to address discrimination problems. I think Senator KENNEDY's 30-day expedited procedures for Congress to act is appropriate, and I accept it. In doing so, I assert that civil rights legislation should appear separately from an immigration reform bill, especially when we have tried so desperately to protect minorities in this country, and in this bill.

With that, I thank Senator KENNEDY for being a remarkable, positive force throughout. I do not want widespread discrimination to occur. If it does occur through employer sanctions, we shall trigger an expedited procedure instead of a whole new agency of Government that has never survived the legislative process. I thank the Senator very much.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank the chairman of our Immigration Subcommittee for his support of this amendment.

The PRESIDING OFFICER. Is there further discussion? The Senator from Idaho?

Mr. SYMMS. Mr. President, I rise to support the amendment, but I would like to make some further points about the question of sanctions itself. I think that what the Senator from Massachusetts is doing certainly improves the situation of the way the bill is written in its current form. I think what we have to recognize is that what is happening with this legislation is the employer sanctions provisions are an attempt to halt illegal immigration into the United States and try to transfer the responsibility for law enforcement from the Government over to the private sector.

I know that some have sincerely argued that the sanctions in this bill, which include both civil fines up to $10,000, Mr. President, and criminal fines up to $3,000 and 6 months' imprisonment for employers hiring illegal workers, will in no way lead to discrimination based upon the ethnic group, race, or skin color. But I believe such discrimination will increase in two ways should these sanctions be passed.

I realize that the amendment of the Senator from Massachusetts is going to allow for a study. If I understand the bill correctly, and I think the distinguished chairman can correct me if I am wrong, in the first year, there will not be sanctions imposed on employers so there will be an opportunity for people to ease into this. I think that is a plus, and compliment the Senator from Wyoming for having that in the bill. But I think that we have to recognize what is going to

happen, and I shall just quote from the Heritage Foundation Issue Bulletin:

(1) Efforts to enforce existing antidiscrimination laws would be hindered by giving employers a first line of defense against accusations of discrimination. If a Mexican, for example, were to bring a case against a firm, the employer simply could state that he suspected the Mexican of being an illegal immigrant.

I think that is something we have to look very carefully at.

(2) Even law-abiding employers would tend to discriminate unwittingly against the foreign born in their "good faith efforts" to comply with the law. Foreigners would be transformed into a suspect class of workers; employers would thus scrutinize their credentials more thoroughly than those of other workers and make summary judgments regarding their legality.

I think that question is one that certainly legal scholars and the judiciary branch are going to have to look at. I personally believe lawyers are going to have a field day in discrimination cases if the sanctions are left in this legislation. I hope we will get them out of the legislation if we expect to have a workable bill.

It is only reasonable to assume that a potential employer will respond in this manner to Federal immigration legislation, particularly legislation such as this which provides for criminal penalties against employers. As the above-mentioned Heritage Bulletin states:

Time magazine recently reported that merely the prospect of a sanctions bill has "excited something resembling panic among many employers. A few factories in the Los Angeles area are already laying off workers they suspect may be in the U.S. illegally."

Mr. President, that may appeal to some people who read that article, but what it says to me is a Hispanic-born U.S. citizen who gets caught in this suspect situation could have a very difficult time obtaining gainful employment if this discrimination becomes rampant.

Although illegal immigration is a legitimate concern, and an area in which our policy must be reformed, our national immigration policy must not jeopardize the welfare of our own citizens.

I simply cannot condone or agree with the portion of this bill that assumes the employer sanctions can somehow answer this problem.

A second problem arises under such sanctions: employers are forced to become police officers. The sanctions shift onto business the burden of enforcing our immigration laws. We already have a governmental agency, the Immigration and Naturalization Service [INS], which is properly charged with preventing entry of illegal immigrants into the United States. Yet, while retaining that agency and its border patrols, this legislation essentially forces upon employers the responsibility of halting undocumented immigration.

We are asking American business men and women to carry out a responsibility that properly belongs to the Federal Government. By shifting the burden of this responsibility to the private sector, the Government is forsaking its duty to the public.

Sanctions such as these will hamper economic activity and growth because of this shift of responsibility and its resulting stringent requirements. When hiring new workers, businesses must take two steps under this bill: First, examine each job applicant's documents to verify that the applicant is a legal worker; and second, maintain records and documents for up to 5 years on each employee hired if a business hires more than three workers. As the Heritage Bulletin points out:

The law would apply equally to Wall Street banks hiring Harvard MBAs and to California hotels hiring bellboys and dishwashers. While [the bill] technically would make this optional, in fact, failure to keep employee records would constitute a legal presumption of guilt for businesses discovered to have an illegal alien in their employment.

Not only are we asking employers to become police officers when a Federal agency already exists to enforce our immigration policy, we are also creating for them a set of verification and paperwork requirements which go beyond the onerous. This will have a drastic effect on every part of the business sector.

Additionally, the small businessmen and women of Idaho and the Nation will be harmed disproportionately by these sanctions because, as the Small Business Administration stated in its 1984 report, "The State of Small Business," small business' percentage of Hispanic workers is almost twice that of large businesses: 6.5 percent as compared to 3.5 percent. As the Heritage Bulletin accurately states:

Because Hispanics are more likely than other workers to arouse INS suspicion, small businesses would be subject to greater harassment. Thus even small businesses with impeccable hiring practices would need to devote a greater proportion of their resources than the typical large firm to protecting themselves against prosecution.

These, Mr. President, are the reasons for which I must strongly oppose the employer sanctions provisions included in S. 1200. I do not mean, however, to detract from the untiring and courageous efforts of the Senator from Wyoming [Mr. SIMPSON] where he has made a good faith effort to pass needed immigration reform. I commend Senator SIMPSON for his hard work to improve the Nation's immigration policy, and I look forward to working with him to make sure all issues are addressed fairly in this legislation.

We must ensure, however, that U.S. immigration laws do not encourage discrimination against particular ethnic groups, that the Federal Government carries out its responsibility to enforce these laws, and that we do not hamper economic activity and growth by creating onerous burdens on employers through recordkeeping and verification requirements.

I know what will happen with many small businesses. Simply, in my opinion, I think the research will show what will happen. I know that the distinguished Senator from Massachusetts is making a good faith effort here.

I think it would be better to take these out on the front end right now and look at what we think will happen based on past performances. I think it would be much better to take the sanctions out now.

I can also count votes, and I think the Senator from Wyoming probably has the votes to keep the sanctions in.

But I believe we are going to rue the day that these sanctions are imposed in this bill and it is going to hurt the very people in the United States, some of the people we wish to help with the passage of this legislation.

I know many people personally in the Hispanic group who are U.S. citizens. They will be the ones who will feel the pain of discrimination when some small businesses and large businesses alike have individuals who in order to protect themselves from the threat of $10,000 fine simply will not hire anyone of a Hispanic origin that they have the slightest suspicion of who may be an illegal entrant into the United States.

I think that is most unfortunate. I think we should make serious consideration of still striking this entire sanctions section from the bill. It is not workable. It is totally in conflict with the civil rights legislation that we have put on the books in this great land of ours.

I would hope that before this is over that the least we could do would be to accept the Kennedy amendment, and that is a good start, but I would like to see it even go further than this.

I thank the chairman and I yield the floor.

Mr. SIMPSON. Mr. President, I greatly appreciate the remarks of the Senator from Idaho and this report also, because indeed it will be important to accept this type of procedure in lieu of something that might not be as workable.

I share only, and then I will conclude, that the employers of America indeed are watching. It is a critical thing to the employers of America, and the most pleasing part of the change of position in these last months has been the U.S. Chamber of Commerce who have embraced this bill now. It was not acceptable to them 2 years ago.

We now have an optional system of verification at first. We do not have a mandatory one. It is something that was fashioned for the employers of America—the Business Roundtable, the National Association of Manufacturers, and the National Federation of Independent Businesses—have all been very supportive and helpful, and they represent some of the largest small businesses in America.

I just share that and, of course, the employers under this bill—those who employ four or less—are less subject to some of the conditions. I share that.

I thank the Senator for his participation.

Mr. SYMMS. Mr. President, will the Senator yield for a question on that?

Mr. SIMPSON. I yield.

Mr. SYMMS. How is the amendment envisioned to work and who is going to decide if discrimination is in fact taking place in the workplace?

Mr. SIMPSON. That will be the Congress of the United States.

Mr. SYMMS. But based on what evidence?

Mr. SIMPSON. That will be on the basis of the reports that are in S. 1200 and the GAO report and a task force.

Mr. SYMMS. To go out in the field and try to make a fair determination?

Mr. SIMPSON. That is correct.

Mr. SYMMS. In other words, if I have this understanding correct, the first year this is on the books there will be no fines levied on employer sanctions?

Mr. SIMPSON. No.

Mr. President, as to the first year, the first 6 months will be an education period throughout the United States and the second 6 months will be a warning period, and there will be no fines within that period.

Mr. SYMMS. Then beyond the second violation in this period the employer would be fined, that is, in the warning period.

Mr. SIMPSON. That is correct, after the warning period.

Mr. SYMMS. So once the word gets out on the street, then you would not expect any discrimination the first year, then. But if in fact we get a report back to Congress that there is discrimination taking place, how soon then would the amendment trigger that the employer sanctions section of the bill will be altered or changed, or what will be the response?

Mr. SIMPSON. If we find that employer sanctions alone are responsible for discrimination in the United States?

Mr. SYMMS. Not alone are responsible, but they are making a contribution to it.

Mr. SIMPSON. If there is widespread discrimination caused by employer sanctions, is that what you are saying?

Mr. SYMMS. That is the question.

Mr. SIMPSON. Yes.

Mr. SYMMS. How soon will we get a response?

Mr. SIMPSON. We will have responses from two different ways. We will have the responses under S. 1200 which have to do with monitoring by EEOC, the Civil Rights Commission, that aspect, and then under Senator KENNEDY's amendment here we will have the GAO report and a task force to tell us if this is occurring.

If it is occurring, then there will be an immediate expedited process.

But there will be GAO reports every 18 months and the expedited process under this amendment.

Mr. SYMMS. I thank the Senator.

Mr. SIMPSON. I thank the Senator from Idaho.

The PRESIDING OFFICER. Is there further debate on the amendment offered by the Senator from Massachusetts?

● Mr. DIXON. Mr. President, I support the amendment of the Senator from Massachusetts which requires Congress to vote on sunsetting employer sanctions in 3 years, if the General Accounting Office finds a widespread pattern of discrimination resulting.

A major concern I have had for the past 3 years as the Senate has attempted to enact immigration reform legislation on three separate occasions is discrimination. More precisely, Mr. President, I feel strongly that Congress must be careful to ensure against the prospect that immigration reform be used as a means to discriminate against Hispanics and other minorities.

One persistent objection to employer sanctions has been the possibility that they could lead to increased discrimination against Hispanics and Asians. Senator KENNEDY's amendment is a reasonable, modest, well thoughtout approach to this problem. I urge its adoption.●

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment of the Senator from Massachusetts.

The amendment (No. 604) was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 605

(Purpose: To substitute provisions regarding the legalization of aliens)

Mr. KENNEDY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] for himself and Mr. BINGAMAN proposes amendment numbered 605.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Beginning on page 68 with line 7, strike out all through line 7 on page 93 and insert in lieu thereof the following:

TITLE II—LEGALIZATION

LEGALIZATION

SEC. 201. (a) Chapter 5 of title II is amended by inserting after section 245 (8 U.S.C. 1255) the following new section:

"§ 245A. "Adjustment of status of certain entrants before January 1, 1981, to that of persons admitted for temporary or permanent residence

"SEC. 245A. (a) The Attorney General may, in his discretion and under such regulations as he shall prescribe, adjust the status of an alien to that of an alien lawfully admitted for permanent residence if—

"(1) the alien applies for such adjustment during the twelve-month period beginning on a date (not later than 180 days after the date of enactment of this section) designated by the Attorney General,

"(2)(A) the alien (other than an alien who entered as a nonimmigrant) establishes that he entered the United States prior to January 1, 1977, and has resided continuously in the United States in an unlawful status from January 1, 1977, through the date of enactment of the Immigration Reform and Control Act of 1985, or

"(B) the alien entered the United States as a nonimmigrant before January 1, 1977, the alien's period of authorized stay as a nonimmigrant expired before Januay 1, 1977, through the passage of time or the alien's unlawful status was known to the Government as of January 1, 1977, and the alien has resided continuously in the United States in an unlawful status from January 1, 1977, through the date of enactment of the Immigration Reform and Control Act of 1985, and

"(C) if the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof;

"(3) the alien was continuously physically present in the United States since the date of the enactment of the Immigration Reform and Control Act of 1985; and

"(4) the alien—

"(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(3),

"(B) has not been convicted of any felony or of three or more misdemeanors committed in the United States,

"(C) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion, and

"(D) registers under the Military Selective Service Act, if the alien is required to be so registered under that Act.

Notwithstanding paragraph (1), an alien who (at any time during the one-year period described in paragraph (1) is the subject of an order to show cause issued under section 242, must make application under such paragraph not later than the end of the thirty-day period beginning either on the

first day of such one-year period or on the date of the issuance of such order, whichever day is later. An alien shall not be considered to have failed to maintained continuous physical presence in the United States for purposes of paragraph (3) by virtue of a brief, casual, and innocent absence from the United States.

"(b)(1) The Attorney General may, in his discretion and under such regulations as he shall prescribe, adjust the status of an alien to that of an alien lawfully admitted for temporary residence if—

"(A) the alien applies for such adjustment during the twelve-month period described in subsection (a)(1);

"(B)(i) the alien (other than an alien who entered as a nonimmigrant) establishes that he entered the United States prior to January 1, 1981, and has resided continuously in the United States in an unlawful status from January 1, 1981, through the date of enactment of the Immigration Reform and Control Act of 1985; or

"(ii) the alien entered the United States as a nonimmigrant before January 1, 1981, the alien's period of authorized stay as a nonimmigrant expired before January 1, 1981, through the passage of time or the alien's unlawful status was known to the Government as of January 1, 1981, and the alien has resided continuously in the United States in an unlawful status from January 1, 1981, through the date of enactment of the Immigration Reform and Control Act of 1985; and

"(iii) if the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof;

"(C) the alien has been continuously physically present in the United States since the date of the enactment of the Immigration Reform and Control Act of 1985; and

"(D) the alien—

"(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(3),

"(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States,

"(iii) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion, and

"(iv) registers under the Military Selective Service Act, if the alien is required to be so registered under that Act.

For purposes of this subsection, an alien in the status of a Cuban and Haitian entrant described in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422 shall be considered to have entered the United States and to be in an unlawful status in the United States. Notwithstanding paragraph (1), an alien who (at any time during the one-year period described in subparagraph (A)) is the subject of an order to show cause issued under section 242, must make application under such paragraph not later than the end of the thirty-day period beginning either on the first day of such one-year period or on the date of the issuance of such order, whichever day is later. An alien shall not be considered to have failed to maintained continuous physical presence in the United States for purposes of subparagraph (C) by virtue of a brief, casual, and innocent absence from the United States.

"(2) During the period an alien is in the lawful temporary resident status granted under paragraph (1)—

"(A) the Attorney General shall, in accordance with regulations, permit the alien to return to the United States after such brief and casual trips abroad as reflect an intention on the part of the alien to adjust to lawful permanent resident status under paragraph (1) and after brief temporary trips abroad occasioned by a family obligation involving an occurrence such as the illness or death of a close relative or other family need, and

"(B) the Attorney General shall grant the alien authorization to engage in employment in the United States and provide to that alien an 'employment authorized' endorsement or other appropriate work permit.

"(3) The Attorney General, in his discretion and under such regulations as he may prescribe, may adjust the status of any alien provided lawful temporary resident status under paragraph (1) to that of an alien lawfully admitted for permanent residence if the alien-

"(A) applies for such adjustment during the 12-month period beginning with the first day of the twenty-fifth month that begins after the date the alien was granted such temporary resident status;

"(B) establishes that he has continuously resided in the United States since the date the alien was granted such temporary resident status;

"(C)(1) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(3), and

"(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States; and

"(D) can demonstrate that he either (i) meets the requirements of section 312 (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States), or (ii) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States. An alien shall not be considered to have lost the continuous residence referred to in subparagraph (B) by reason of an absence from the United States permitted under paragraph (2)(A). The Attorney General may, in his discretion, waive all or part of the requirements of subparagraph (D) in the case of an alien who is 65 years of age or older.

"(4) The Attorney General shall provide for termination of temporary resident status granted an alien under this subsection—

"(A) if it appears to the Attorney General that the alien was in fact not eligible for such status,

"(B) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (c)(3), or (ii) is convicted of any felony or three or more misdemeanors committed in the United States, or

"(C) at the end of the thirty-seventh month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (3) and such application has not been denied.

"(c)(1)(A) The Attorney General shall provide that applications for adjustment of status under subsection (a) or under subsection (b)(1) may be filed—

"(i) with the Attorney General, or

"(ii) with an organization or person designated under subparagraph (B), but only if the applicant consents to the forwarding of the application to the Attorney General.

"(B) For purposes of assisting in the program of legalization provided under this section, the Attorney General shall designate qualified voluntary organizations and other qualified State, local, and community organizations and may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under Public law 89-732 or under Public Law 94-145.

"(C) Each organization or person designated under subparagraph (B) must agree to forward to the Attorney General applications filed with it in accordance with subparagraph (A)(ii) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such organization or person may make a determination required by this section to be made by the Attorney General.

"(D) Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more then $10,000 or imprisoned not more than five years, or both.

"(E) The Attorney General shall provide for a schedule of fees to be charged for the filing of applications for adjustment under subsection (a) or under subsection (b)(1). The Attorney General shall deposit payments received under the preceding sentence in a separate account and amounts in such account shall be available, without fiscal year limitation, only to cover administrative expenses incurred in connection with the review of applications filed under this section.

"(2) The numerical limitations of section 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

"(3) The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not be applicable in the determination of an alien's admissibility under subsections (a)(4)(A), (b)(1)(D)(i), (b)(3)(C)(i), and (b)(4)(B)(i), and the Attorney General, in making such determination with respect to a particular alien, may waive any other provision of such section other than paragraph (9), (10), (15) (except as it applies to the adjustment to lawful temporary resident status under subsection (a)), (23) (except for so much of such paragraph as relates to a single offense of simple possession of thirty grams or less of marihuana), (27), (28), (29), or (33), for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. For purposes of this section, an alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(15) if the alien demonstrates a history of employment in the United States evidencing self-support without receipt of public cash assistance.

"(4) During the six-month period beginning on the date of the enactment of this section, the Attorney General, in cooperation with qualified organizations and governments designated under paragraph (1) and the Secretary of Labor, shall broadly disseminate information respecting the ben-

efits which aliens may receive under this section and the requirements to obtain such benefits.

"(5)(A) The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1) and who can establish a prima facie case of eligibility to have his status adjusted under subsection (a) or subsection (b)(1) (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

"(i) may not be deported, and

"(ii) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit.

"(B) The Attorney General shall provide that in the case of an alien who presents an application for adjustment of status under subsection (a) or subsection (b)(1) during such application period which application establishes a prima facie case of eligibility to have his status adjusted under such subsection, and until a final administrative determination on the application has been made in accordance with this section, the alien—

"(i) may not be deported, and

"(ii) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit.

"(6) Notwithstanding the Federal Property and Administrative Act of 1949 (40 U.S.C. 471 et. seq.), the Attorney General is hereby authorized to expend from the appropriation provided for the administration and enforcement of this Act, such amounts as may be necessary for the leasing or acquisition of property in the fulfillment of this section. This authority shall end two years after the date of the enactment of this Act.

"(d)(1) For purposes of subsection (a), (b)(1), or (b)(3), an alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside the United States as a result of a departure under an order of deportation.

"(2) Any period of time during which an alien is outside the United States pursuant to the advance parole procedures of the Service shall not be considered as part of the period of time during which an alien is outside in the United States for purposes of this section.

"(e)(1) During the five-year period beginning on the date an alien is granted lawful temporary resident status granted under subsection (b)(1) and during the three-year period beginning on the date an alien is granted lawful permanent resident status under subsection (a), and notwithstanding any other provision of law—

"(A) except as provided in paragraph (2), the alien is not eligible for—

"(i) any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government,

"(ii) medical assistance under a State plan approved under title XIX of the Social Security Act, and

"(iii) assistance under the Food Stamp Act of 1977, and

"(B) a State or political subdivision therein may, to the extent consistent with subparagraph (A), provide that the alien is not eligible for the programs of financial or medical assistance furnished under the law of that State or political subdivision.

Programs authorized under the National School Lunch Act, the Child Nutrition Act of 1966, the Vocational Education Act of 1963, Chapter 1 of the Education Consolidation and Improvement Act of 1981, the Headstate-Follow Through Act, the Job Training Partnership Act, and subparts 4 and 5 of part A of title IV of the Higher Education Act of 1965 shall not be construed to be programs of financial assistance referred to in subparagraph (A)(i). Programs authorized under the Public Health Service Act and title V of the Social Security Act shall not be construed to be programs of financial assistance referred to in subparagraph (A)(i).

"(2) Paragraph (1) shall not apply—

"(A) to a Cuban and Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422, as in effect on April 1, 1983);

"(B) in the case of assistance furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act), or

"(C) in the case of medical assistance (i) for care and services provided to an alien who is under 18 years of age, (ii) for emergency services (as defined for purposes of section 1916(e)(2)(D) of the Social Security Act) or (iii) for services described in section 1916(a)(2)(B) of such Act (relating to services for pregnant women).

The eligibility, comparability, and any other State plan requirements of title XIX of the Social Security Act are superceded to the extent required to restrict the medical assistance in the manner described in subparagraph (C) and paragraph (1)(A)(ii). The Secretary of Health and Human Services, in coordination with the Attorney General, shall promulgate regulations in order to carry out subparagraphs (B) and (C).

"(3) For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96-122), assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

"(f)(1) The Attorney General, after consultation with the Committees on the Judiciary of the House of Representatives and of the Senate and with organizations and persons designated under subsection (c)(1)(B), shall prescribe—

"(A) regulations establishing a definition of the term 'resided continuously', as used in this section, and the evidence needed to establish that an alien has resided continuously in the United States for purposes of this section, and

"(B) such other regulations as may be necessary to carry out this section.

"(2) In prescribing regulations described in paragraph (1)(A), the Attorney General shall—

"(A) specify individual periods, and aggregate periods, of absence from the United States which will be considered to break a period of continuous residence in the United States and shall take into account absences due merely to brief and casual trips abroad;

"(B) provide for a waiver, in the discretion of the Attorney General, of the periods specified under subparagraph (A) in the case of an absence from the United States due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien;

"(C) require that continuous residence in the United States must be established through documents, together with independent corroboration of the information contained in such documents; and

"(D) require that the documents provided under subparagraph (C) be employment-related if employment-related documents with respect to the alien are available to the applicant.

"(3) Regulations prescribed under this section may be prescribed to take effect on an interim final basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

"(g)(1) There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

"(2) The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination. Such administrative appellate review shall be based upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

"(3)(A) There shall be no judicial review of such a determination, unless the applicant has exhausted the administrative review described in paragraph (2).

"(B) There shall be judicial review of such a denial only in the judicial review of an order of deportation under section 106. Such review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive.

"(h) Notwithstanding any other provision of law, the retired or retainer pay of a member or former member of the Armed Forces of the United States or the annuity of a retired employee of the Federal Government shall not be reduced while such individual is temporarily employed by the Service for a period of not to exceed fifteen months to perform duties in connection with the adjustment of status of aliens under this section.".

(b) The table of contents for chapter 5 of title II is amended by inserting after the item relating to section 245 the following new item:

"Sec. 245A. Adjustment of status of certain entrants before January 1, 1981, to that of persons admitted for temporary or permanent residence.".

(c) For reports on the legalization program provided under the amendment made by subsection (a), see section 405 of this Act.

CUBAN-HAITIAN ADJUSTMENT

SEC. 202. (a) The status of any alien described in subsection (b) may be adjusted by the Attorney General, in the Attorney General's discretion and under such regulations as the Attorney General may prescribe, to that of an alien lawfully admitted for permanent residence if—

(1) the alien applies for such adjustment within two years after the date of the enactment of this Act;

(2) the alien is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent resi-

dence, except in determining such admissibility the grounds for exclusion specified in paragraphs (14), (15), (20), (21), (25), and (32) of section 212(a) of the Immigration and Nationality Act shall not apply;

(3) the alien is not an alien described in section 243(h)(2) of such Act;

(4) the alien is physically present in the United States on the date the application for such adjustment is filed; and

(5) the alien has continuously resided in the United States since January 1, 1982.

(b) The benefits provided by subsection (a) shall apply to any alien—

(1) who has received an immigrant designation as a Cuban/Haitian Entrant (Status Pending) as of the date of the enactment of this Act, or

(2) who is a national of Cuba or Haiti, who arrived in the United States before January 1, 1982, with respect to whom any record was established by the Immigration and Naturalization Service before January 1, 1982, and who (unless the alien filed an application for asylum with the Immigration and Naturalization Service before January 1, 1982) was not admitted to the United States as a nonimmigrant.

(c) An alien who, as of the date of the enactment of this Act, is a Cuban and Haitian entrant for the purpose of section 501 of Public Law 96-422 shall continue to be considered such an entrant for such purpose without regard to any adjustment of status effected under this section.

(d) Upon approval of an alien's application for adjustment of status under subsection (a), the Attorney General shall establish a record of the alien's admission for permanent residence as of January 1, 1982.

(e) When an alien is granted the status of having been lawfully admitted for permanent residence pursuant to this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under this Act and the Attorney General shall not be required to charge the alien any fee.

(f) Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act shall apply in the administration of this section. Nothing contained in this section shall be held to repeal, amend, alter, modify, effect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.

STATE LEGALIZATION IMPACT-ASSISTANCE GRANTS

SEC. 203. (a)(1) There are authorized to be appropriated for grants (and related Federal administrative costs) to carry out this section $1,000,000,000 (less the amount described in paragraph (2)) for fiscal year 1986 and for each of the three succeeding fiscal years.

(2)(A) Subject to subparagraphs (B) and (C), the amount described in this paragraph for a fiscal year is equal to the amount estimated to be expended by the Federal Government in the fiscal year for the programs of financial assistance, medical assistance, and assistance under the Food Stamp Act of 1977 for aliens who would not be eligible for such assistance under paragraph (1)(A) of section 249A(e) of the Immigration and Nationality Act but for the provisions of subparagraphs (B) and (C) of paragraph (2) of such section.

(B) For purposes of subparagraph (A), with respect to—

(i) fiscal year 1986, the amount estimated to be expended is equal to $30,000,000, and

(ii) fiscal year 1987, the amount estimated to be expended is equal to $300,000,000.

For subsequent fiscal years, the amount estimated to be expended shall be such estimate as contained in the annual fiscal budget submitted for that year to the Congress by the President.

Mr. KENNEDY. Mr. President, as I indicated at the outset of this debate, I believe a fundamental deficiency in the pending bill is its weakened provisions on the legalization program.

The bill before us is a retreat from the Humane and Flexible Legalization Program voted twice by the Senate—once by the House of Representatives—and recommended unanimously by the Select Commission on Immigration and Refugee Policy.

It is a retreat from the position that the sponsor of this legislation took himself only a few months ago during last year's conference committee on the previous immigration bill adopted by the Senate in the last session.

And it is a retreat from the fundamental principle upon which this legislation has always been based—the "three-legged stool," some have called it—requiring that we move simultaneously on: First, new enforcement provisions; second, implementation of employer sanctions; and third, the institution of a legalization program. These three actions were intended to go hand-in-hand—to be enacted simultaneously, and implemented together.

Mr. President, legalization is an essential corrollary to the implementation of employer sanctions. As we institute new enforcement policies, legalization allows us to wipe the slate clean, to deal humanely and responsibly with the problems of the past as we begin to deal more effectively with future illegal migration.

Rather than granting outright amnesty as in previous bills, the pending bill creates a nine member "Legalization Commission" to determine whether employer sanctions and the new enforcement provisions are in place and working to curtail illegal alien flow before a legalization program can be implemented. They must report within 1 year.

Even with the clarifying amendments adopted in committee, there are still many procedural questions about just how this Commission would work, and just what it would have to determine, before legalization is authorized—and on what grounds it is supposed to make its decision that employer sanctions are curtailing illegal migration.

It is an awkward procedure at best, with many uncertainties, and clearly walks away from a generous legalization program proposed in the previous bills Congess has passed.

What would happen to an undocumented alien who would otherwise be eligible for legalization, but is caught during the year or more the Commission was deliberating? Should he be deported if he has been for many years and has strong ties to the community, and would have been eligible for legalization? And the Commission's findings are inevitably subjective and judgmental, and subject to lawsuits.

Mr. President, the only sensible way to deal with this issue is to follow the Select Commission's recommendation that we move simultaneously on new enforcement strategies at the same time we also clean up the mess current law has created in a a large population of undocumented aliens. After all, it is the result of current law—the "Texas Proviso"—which has helped create the illegal alien problem—a law that says it is legal for an employer to hire an illegal alien, that has thrown a welcome mat for undocumented aliens to come to this country.

The amendment I am offering simply takes the compromise agreed upon in last year's conference committee, to establish a legalization program with a January 1, 1981, cutoff date, a two-track system, to be implemented at the same time, in a phased fashion, as employer sanctions are implemented.

It was a compromise that didn't go as far as I would have preferred, but it was a compromise reached just a few months ago; if it was good enough as a compromise last October, with Senator SIMPSON's support, it ought to be good enough for us now.

I hope the Senate will accept this amendment, which really reflects what we have supported in the past.

Mr. President, just to briefly sum up—the Members of this body have addressed this particular issue I know on two previous times, so they are familiar with the elements that are involved—and I am prepared to go swiftly to a vote.

Under the enforcement provision, as outlined by the chairman of the subcommittee, we have the date of the enactment of the bill and then 6 months later we have notification to various employers after 6 months, which would be a year before the enforcement mechanism is actually implemented. So we have a 12-month period.

That is the same that has been in previous bills. This was recommended by the Select Commission and that has been in previous bills and that is in the current bill.

On the other side is legalization. Previously, in the other two bills, we have had the date of enactment and 6 months thereafter we have the prepa-

ration by the INS. Six months for the implementation of the enforcement provisions, and 6 months for INS on legalization.

Then, after INS does the preparation for the Legalization Program, we have a 12-month period where those individuals who have come here prior to 1981 have the opportunity to adjust their status. You have to have been here prior to 1981 to be able to adjust your status. If this bill is accepted and passed, it will be 1985. We have 1982, 1983, 1984, and 1985, so they would have to have been here at least for those 4 years. And to be able to adjust their status and to go into a permanent resident alien position, they would have to have been here 3 years prior to that.

So we have the 4 years after 1981 and the 3 years prior to 1981 in order to be able to adjust their status to a permanent resident alien. If they have just been here, say, a year before 1981, they are temporary residents and there is a significant reduction in terms of any benefits they will be eligible for. They will be eligible for benefits if they have been here for 3 years before 1981, which would be a total of 8 years in the United States.

We recognize, and I believe it is an important recognition, that they will have to have been here in good standing, a member of the community. We have seen, in the past, where they have obviously paid the local taxes and paid into Social Security, and we have put those figures into the RECORD in previous debates about the amount they have paid in taxes.

But they will have to have been here for 8 years; otherwise, they would see a significant reduction in terms of benefits.

I do not intend to take the time of the Senate this afternoon to talk about what is happening to those in our society, the undocumented aliens, and the whole subterranean economy and the exploitations which have taken place and all the insidiousness that has been heaped upon these individuals who know if they run into some difficulty and are turned in by their employer they are deported, and what is happening to their children and their attitudes toward the whole process of the system in this country.

There is no question there is a subterranean economy with extraordinary exploitation and all the implications that has for our own society.

We are attempting, with this proposal, to make those individuals who have demonstrated from their past conduct a commitment to this country, a commitment to society, a commitment to their family and their community, and to insure that there will not be a constant sense of fear and to be able to, at that time, adjust their status and move toward citizenship. Then they are at least on the track to be able to make application for citizenship.

So, Mr. President, I hope that we can accept this amendment even though it was altered and changed as we moved through the conference committee process last year. The Commission established in the bill is going to have to make a judgment that the flow of immigrants into the United States has been curtailed. All of us are hopeful, if this is actually enacted into law, that there will be a curtailing of that. But, I, quite frankly, believe, and I think it has been demonstrated by an examination of the flow charts, that if the peso gets devalued 30 or 40 percent, you find a flood of undocumented aliens coming here from neighboring countries, or if there is continued conflict in Central America, that has as much of an effect in terms of flow lines and what is happening in the border areas.

I was talking to a distinguished Congressman who represents the Laredo, TX, area yesterday. He pointed out that last year there was a 125-percent increase in undocumenteds that have actually come across their border. They estimate that 1 out of 3 gets in here. But there has been a dramatic increase and there has almost been a 100-percent increase in the flow, as there has been a 100-percent increase in the Border Patrol.

Mr. President, I yield to the chairman of the committee.

Mr. SIMPSON. Mr. President, again a thoughtful review of a tough part of the bill, legalization; something I am very committed to, very much so, and I have been. It is a key to the operation.

I ought to perhaps refer to it as the four-legged stool. I remember the phrase about the three-legged stool, which is now with the fourth leg, which is employer sanctions, together with the other 3: some kind of verification process, increased and appropriate enforcement at our borders internally, and legalization.

So my problem with this amendment—and I speak against the amendment—is this: If legalization is going to occur before we have effective law enforcement in place and before that is achieved, then it is my feeling—and studies disclose—that the illegal population will immediately begin to grow again.

This will create only additional pressures for additional legalization. That is the problem.

These periodic legalizations then, in effect, would be almost a continuing repeal of the U.S. immigration laws. That is exactly what I see could occur.

Legalization in the absence of more effective enforcement is very likely to increase the illegal flow.

It was interesting as the Select Commission discussed setting a legalization date. We kept that confidential for a time when we picked January 1, 1980, as we did in the Select Commission, because we knew when people heard about a date, there would be a crush, a flow across the border saying, "Wait a minute, when did they set that date? When was that?"

If there are any kind of communications procedures that outdo Ma Bell or drums or smoke signals or anything else, it is what is going on in the United States with immigration. People here are seeking to get their relatives here, especially those who have been standing in line. That is how it works. That is why there are so many illegals in the issue when there are so many legals standing in line. That is why legalization must be done.

Legalization and the absence of effective enforcement is going to increase this flow.

Let me quote one sentence from the select commission report:

> Without more effective enforcement than the United States has had in the past, the legalization could serve as a stimulus to further illegal entry, and the select commission is opposed to any program that could precipitate such movement.

Public opinion rebels against amnesty. That is unfortunate. It became the center of a political campaign in Texas last year. That was unfortunate; 35-percent support versus 55-percent against, according to a November 1984 Gallup poll. That is sad.

An amendment to delete legalization entirely failed by only 38 votes in the U.S. House last year.

If we are going to enact legislation, we must be able to assure our constituents that we have effectively addressed the problem of illegal immigration, and that is the need that led to legalization in the first place. The Commission did set January 1, 1980, because they wanted a date that was before public discussion of the legalization beginning.

Again, the Select Commission stated, "The Commission does not want to reward undocumented, illegal aliens who may have come to the United States in part at least because of recent discussions about legalization."

The full Senate in the 98th Congress and the Senate Judiciary Committee this year rejected an attempt to advance this date beyond January 1, 1980. Moving up that date by 1 year would add hundreds of thousands more to the program. They would be those who had formed the least ties to the United States, who have acquired the fewest equities, and who have entered ahead of those abroad who have waited so long to legally enter.

Increasing the date upward would increase the financial stakes on States and localities. They certainly have an interest in this business.

Under the CBO estimate, the increased cost would be $100 million to $200 million per year.

With that, Mr. President, I would say that there is one dangling thread here. Some critics claim that the triggering of legalization will expose ineligible, illegal aliens to additional exploitation before legalization is triggered. I do respectfully reject those arguments on very brief grounds.

The real exploitation in America will occur if we do nothing. That is what will occur in America. The real exploitation will occur if we do not achieve effective enforcement. If legalization draws in new surges of illegal aliens, then we have a whole new generation of exploited aliens who come here to stay.

The bill does not penalize current employers of illegal aliens, but, rather, those who hire illegals after the bill is enacted. Mr. President, I hope you hear that carefully.

The bill does not penalize current employers of illegal aliens but, rather, those who hire illegals after the bill is enacted, new hires.

The Legalization Commission under S. 1200 is not required in any way to certify that employer sanctions and increased enforcement are somehow actually reducing illegal immigration; only that the enforcement mechanisms are in place, receiving adequate funding from this Congress, and it appearing that legalization will not be a stimulus for new illegal immigration. Thus, legalization will be triggered before the enforcement measures really start clamping down.

With that, Mr. President, I remain totally committed to a legalization program. That is why there was an agreement in the Judiciary Committee to start the legalization within 3 years if the Commission does not report any sooner, or terminate the Legalization Commission, which includes persons appointed by the President pro tempore of the Senate and the Speaker of the House, all of whom must be totally committed to the concept of legalization. I hope it will be much sooner than that. The reason for it is that we must have the enforcement properly in place or we will create a new surge. That is my concern and that is why I speak against the amendment.

MOTION TO RECONSIDER

Mr. KENNEDY. Mr. President, I move to reconsider the Hatch amendment.

Mr. SIMON. Mr. President, I move to lay that motion on the table.

Mr. SIMPSON. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. EVANS). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SIMON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMON. Mr. President, I would like to withdraw my motion to lay on the table.

The PRESIDING OFFICER. The motion of the Senator from Massachusetts is not in order while there is another amendment pending, and there is an amendment pending.

Mr. KENNEDY. Mr. President, I have outlined the differences between what is in the pending legislation and the amendment which I offered.

We have accepted, in the last's year bill, the concept of simultaneous enforcement and legalization.

If this legislation is enacted, all we are asking is that we keep both of those parts of the framework in tandem. If the amendment that I offer is accepted, both of those parts will be kept in tandem. I think it is important that we do that rather than referring this whole issue to a commission that is going to be guided by the word "curtail"—as well intentioned as those commisisoners may be. So I hope, Mr. President, that we would move toward accepting this amendment. It represents the compromise between the House and the Senate in the conference committee last October. Last year it was accepted by the Senator from Wyoming. So it seems to me that if it was good enough last fall on the basis of the merits, it ought to be good enough for us to be willing to accept it today.

Mr. SIMON. Will the Senator from Massachusetts yield?

Mr. KENNEDY. I would be glad to yield.

Mr. SIMON. I would just add that when Commissioner Nelson appeared before us, I asked him whether his statement of 2 years ago that they could move immediately on legalization was still valid, he said they could, they are ready to go on it. It just seems to me the Senator's amendment makes eminent good sense. I hope it will be adopted by the Senate.

Mr. KENNEDY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. If there further debate? If not, the question is on agreeing to the amendment of the Senator from Massachusetts. The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Mississippi [Mr. COCHRAN], the Senator from Maine [Mr. COHEN], the Senator from Kansas [Mr. DOLE], the Senator from North Carolina [Mr. EAST], the Senator from Utah [Mr. GARN], the Senator from Kansas [Mrs. KASSEBAUM], and the Senator from Vermont [Mr. STAFFORD] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Kentucky [Mr. FORD], and the Senator from Arkansas [Mr. PRYOR] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 26, nays 65, as follows:

[Rollcall Vote No. 179 Leg.]

YEAS—26

Bentsen	Glenn	Levin
Biden	Gore	Matsunaga
Bingaman	Harkin	Melcher
Bradley	Hart	Metzenbaum
Cranston	Inouye	Pell
DeConcini	Kennedy	Rockefeller
Dixon	Kerry	Sarbanes
Dodd	Lautenberg	Simon
Eagleton	Leahy	

NAYS—65

Abdnor	Hatch	Nunn
Andrews	Hatfield	Packwood
Armstrong	Hawkins	Pressler
Baucus	Hecht	Proxmire
Boren	Heflin	Quayle
Boschwitz	Heinz	Riegle
Bumpers	Helms	Roth
Burdick	Hollings	Rudman
Byrd	Humphrey	Sasser
Chafee	Johnston	Simpson
Chiles	Kasten	Specter
D'Amato	Laxalt	Stennis
Danforth	Long	Stevens
Denton	Lugar	Symms
Domenici	Mathias	Thurmond
Durenberger	Mattingly	Trible
Evans	McClure	Wallop
Exon	McConnell	Warner
Goldwater	Mitchell	Weicker
Gorton	Moynihan	Wilson
Gramm	Murkowski	Zorinsky
Grassley	Nickles	

NOT VOTING—9

Cochran	East	Kassebaum
Cohen	Ford	Pryor
Dole	Garn	Stafford

So the amendment (No. 605) was rejected.

Mr. SIMPSON. Mr. President, I move to reconsider the vote.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HART addressed the Chair.

Mr. SIMPSON. Mr. President, for the benefit of my colleagues—many of them asked about the schedule—let me try to assist or share some information as to what we are attempting to do in proceeding with this measure. I think the number of amendments is decreasing. Some have been taken care of, some have been withdrawn. So I think we can handle the business today—at least, that is still the intent of the minority manager and myself.

At this time, we will go to a colloquy, a very brief colloquy of Senator HATFIELD; then to Senator HART; then to Senator MCCLURE; which is the amendment with regard to search warrants; then to Senator CHILES; and then to Senator MOYNIHAN, which would be very swiftly taken; then a Metzenbaum amendment, a Simon amendment, or perhaps two, two other amendments that will be accepted, and we will proceed on that schedule.

Mr. LEVIN. Mr. President, as my friend knows there also will be an amendment that I will offer plus a colloquy which I think we are still trying to work up. That amendment may or may not be acceptable. We do not yet know. I do want to be on that list.

Mr. SIMPSON. May I ask my colleague and friend from Michigan if that is the amendment with regard to the northern border activities, or is there to be a colloquy also?

Mr. LEVIN. The colloquy relates to the northern border. The amendment relates to the question of legalization.

Mr. SIMPSON. Which is the subject of a discussion we are now having about a colloquy perhaps to supplant that.

Mr. LEVIN. No, I do not think that will supplant the amendment.

Mr. SIMPSON. I see.

Mr. LEVIN. The Hart amendment which is going to be offered is not a substitute for the amendment that the Senator from Wyoming and I spoke about this morning.

Mr. SIMPSON. I thank the Senator from Michigan.

With that, I recognize the Senator from Oregon for that colloquy or the beginning of it.

Is he prepared to do that or shall I go to Senator HART first.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. HART. I thank the Chair.

AMENDMENT NO. 606

Mr. HART. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Colorado [Mr. HART] for himself and Mr. LEVIN proposes an amendment numbered 606.

Mr. HART. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Page 13, line 4, before the period insert "and unfair immigration-related employment practices".

Page 13, line 7, strike out "section" and insert in lieu thereof "sections".

Page 33, line 12, strike out all that follows the first period.

Page 33, after line 12, insert the following:

"UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

"SEC. 274B. (a) PROHIBITION OF DISCRIMINATION BASED ON NATIONAL ORIGIN OR IMMIGRATION STATUS.—

"(1) GENERAL RULE.—It is unfair immigration-related employment practice for a person or other entity to engage in a pattern or practice of discrimination against individuals (other than unauthorized aliens, described in section 274A(h)(2)) with respect to the hiring, or recruitment or referral for a fee, of individuals for employment—

"(A) because of such individual's national origin, or

"(B) in the case of a citizen or intending citizen (as defined in paragraph (3)), because of their status as United States citizens, as aliens admitted for permanent residence, as aliens admitted as refugees, as aliens granted asylum, or as aliens with lawful temporary resident status granted under section 202 of the Immigration Reform and Control Act of 1985.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

"(A) a person or other entity that employs three or fewer employees,

"(B) a person's or entity's discrimination because of an individual's national origin if the discrimination with respect to that person or entity and that individual is covered under section 703 of the Civil Rights Act of 1964, or

"(C) discrimination under paragraph (1)(B) which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

"(3) DEFINITION OF CITIZEN OR INTENDING CITIZEN.—As used in paragraph (1), the term 'citizen or intending citizen' means an individual who—

"(A) is a citizen or national of the United States, or

"(B) is an alien who—

"(i) is lawfully admitted for permanent residence, is admitted as a refugee under section 207, is granted asylum under section 208, or is granted lawful temporary resident status under section 202 of the Immigration Reform and Control Act of 1985, and

"(ii) evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen;

but does not include an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after the date of the enactment of this section.

"(b) COMPLAINTS OF VIOLATIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), any person alleging that the person is adversely affected directly by an unfair immigration-related employment practice or an officer of the Service alleging that an unfair immigration-related employment practice has occurred or is occurring may file a charge respecting such practice or violation with the Special Counsel (appointed under subsection (c)). Charges shall be in writing under oath or affirmation and shall contain such information as the Attorney General requires. The person filing a charge shall serve a notice of the charge (including the date, place, and circumstances of the alleged unfair immigration-related employment practice) on the person or entity involved within 10 days. The Special Counsel shall notify each complainant of the notice required under the previous sentence.

"(2) NO OVERLAP WITH EEOC COMPLAINTS.—No charge may be filed respecting an unfair immigration-related employment practice described in subsection (a)(1)(A) if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964, and no charge respecting an employment practice may be filed with the Equal Employment Opportunity Commission under such title if a charge with respect to such practice based on the same set of facts has been filed under this subsection. The previous sentence shall not apply where a charge has been mistakenly filed and has been withdrawn.

"(c) SPECIAL COUNSEL.—

"(1) APPOINTMENT.—The President shall appoint, by and with the advice and consent of the Senate, a Special Counsel for Immigration-Related Unfair Employment Practices (hereinafter in this section referred to as the 'Special Counsel') within the Department of Justice, but outside the Immigration and Naturalization Service, to serve for a term of four years. In the case of a vacancy in the office of the Special Counsel the President may designate the officer or employee who shall act as Special Counsel during such vacancy.

"(2) DUTIES.—The Special Counsel shall be responsible for investigation of charges and issuance of complaints under this section and in respect of the prosecution of all such complaints before immigration judges and the exercise of certain functions under subsection (i)(1).

"(3) COMPENSATION.—The Special Counsel is entitled to receive compensation at the rate now or hereafter provided for grade GS-17 of the General Schedule, under section 5332 of title 5, United States Code.

"(4) REGIONAL OFFICES.—The Special Counsel, in accordance with regulations of the Attorney General, shall establish such regional offices as may be necessary to carry out his duties.

"(5) STAFFING OF OFFICE OF SPECIAL COUNSEL.—In providing staffing for the Special Counsel, the Attorney General shall take into consideration the volume of charges filed with the Special Counsel under this section, as well as the complexity of those charges and the need for the conduct of investigations under the second sentence of subsection (d)(1).

"(d) INVESTIGATION OF COMPLAINTS.—

"(1) BY SPECIAL COUNSEL.—The Special Counsel shall investigate each charge received and, within 90 days of the date of the receipt of the charge, determine whether or not there is reasonable cause to believe that the charge is true and whether or not to bring a complaint with respect to the charge before an administrative law judge. The Special Counsel may, on his own initiative, conduct investigations respecting unfair immigration-related employment practices and, based on such an investigation and subject to paragraph (3), file a complaint before such a judge.

"(2) PRIVATE ACTIONS WHERE A PATTERN OR PRACTICE VIOLATION.—If the Special Counsel, after receiving such a charge respecting an unfair immigration-related employment practice which alleges a pattern or practice of discriminatory activity, has not filed a complaint before an immigration judge with respect to such charge within such 90-day period, the person making the charge may (subject to paragraph (3)) file a complaint directly before such a judge.

"(3) TIME LIMITATIONS ON COMPLAINTS.—No complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of the filing of the charge with the Special Counsel and the service of a copy thereof upon the person or entity against whom such charge is made. This subparagraph shall not prevent the subsequent amending of a charge or complaint under subsection (e)(1).

"(e) HEARINGS.—

"(1) NOTICE.—Whenever a complaint is made that a person or entity has engaged in or is engaging in any such unfair immigration-related employment practice, an immigration judge shall have power to issue and cause to be served upon such person or entity a copy of the complaint and a notice of hearing before the judge at a place therein fixed, not less than five days after the serving of the complaint. Any such complaint may be amended by the judge conducting the hearing in the judge's discretion at any time prior to the issuance of an order based thereon. The person or entity so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint.

"(2) CONDUCT OF HEARINGS.—Hearings on complaints under this subsection shall be considered before immigration judges who are specially designated by the Attorney General as having special training respecting employment discrimination and, to the extent practicable, before such judges who only consider cases under this section.

"(3) COMPLAINANT AS PARTY.—Any person filing a charge with the Special Counsel respecting an unfair immigration-related employment practice shall be considered a full party to any complaint before an immigration judge respecting such practice and any subsequent appeal respecting that complaint. In the discretion of the judge conducting the hearing, any other person may be allowed to intervene in the said proceeding and to present testimony.

"(f) TESTIMONY AND AUTHORITY OF HEARING OFFICERS.—

"(1) TESTIMONY.—The testimony taken by the immigration judge shall be reduced to writing. Thereafter, the judge, in his discretion, upon notice may provide for the taking of further testimony or hear argument.

"(2) AUTHORITY OF IMMIGRATION JUDGES.—In conducting investigations and hearings under this subsection and in accordance with regulations of the Attorney General, the Special Counsel and immigration judges shall have reasonable access to examine evidence of any person or entity being investigated. The immigration judges by subpena may compel the attendance of witnesses and the production of evidence at any designated place or hearing. In case of contumacy or refusal to obey a subpena lawfully issued under this paragraph and upon application of the immigration judge, an appropriate district court of the United States may issue an order requiring compliance with such subpena and any failure to obey such order may be punished by such court as a contempt thereof.

"(g) DETERMINATIONS.—

"(1) ORDER.—The immigration judge shall issue and cause to be served on the parties to the proceeding an order.

"(2) ORDERS FINDING VIOLATIONS.—

"(A) IN GENERAL.—If, upon the preponderance of the testimony taken, an immigration judge determines that that any person or entity named in the complaint has engaged in or is engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue and cause to be served on such person or entity an order which requires such person or entity to cease and desist from such unfair immigration-related employment practices.

"(B) CONTENTS OF ORDER.—Such an order also may require the person or entity—

"(i) to comply with the requirements of section 274A(b) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years;

"(ii) to retain for the period referred to in clause (i) and only for purposes consistent with section 274A(b)(6), the name and address of each individual who applies, in person or in writing, for hiring for an existing position, or for recruiting or referring for a fee, for employment in the United States;

"(iii) to hire individuals directly and adversely affected, with or without back pay; and

"(iv)(I) except as provided in subclause (II), to pay a civil penalty of not more than $1,000 for each individual discriminated against, and

"(II) in the case of a person or entity previously subject to such an order, to pay a civil penalty of not more than $2,000 for each individual discriminated against.

"(C) LIMITATION ON BACK PAY REMEDY.—In providing a remedy under subparagraph (B)(iii), back pay liability shall not accrue from a date more than two years prior to the filing of a charge with an immigration judge. Interim earnings or amounts earnable with reasonable diligence by the individual or individuals aggrieved against shall operate to reduce the back pay otherwise allowable under such paragraph. No order shall require the hiring of an individual as an employee or the payment to him of any back pay, if the individual was refused employment for any reason other than discrimination on account of national origin or citizenship status.

"(D) TREATMENT OF DISTINCT ENTITIES.—In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment without reference to the practices of, or under the control of, or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

"(3) ORDERS NOT FINDING VIOLATIONS.—If upon the preponderance of the testimony taken an immigration judge determines that the person or entity named in the complaint has engaged or is engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue an order dismissing the complaint.

"(h) AWARDING OF ATTORNEY'S FEES.—In amy complaint respecting an unfair immigration-related employment practice, an immigration judge, in the judge's discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee.

"(i) JUDICIAL REVIEW PROCEDURES.—

"(1) MODIFICATION OF FINDINGS OR ORDERS PRIOR TO FILING RECORD IN COURT.—Until the record in a case is filed in a court under this subsection, an immigration judge may at any time upon reasonable notice and in such manner as the judge deems proper, modify or set aside, in whole or in part, any finding or order made or issued by the judge.

"(2) PETITION OF COURT FOR ENFORCEMENT OF ORDER, PROCEEDINGS, REVIEW OF JUDGMENT.—The special Counsel may petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair immigration-related employment practice in question occurred or wherein such person resides or transacts business, for the enforcement of the order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceedings and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the immigration judge. No objection that has not been urged before the judge shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the judge with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the judge, the court may order such additional evidence to be taken before the judge and to be made a part of the record. The immigration judge may modify his findings as to the facts, or make new findings by reason of additional evidence so taken and filed, and the judge shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file his recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if applications was made to the district court, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

"(3) REVIEW OF FINAL ORDER ON PETITION TO COURT.—Any person aggrieved by a final order of an immigration judge under this section granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair immigration-related employment practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such a court a written petition praying that the order of the immigration judge be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the immigration judge, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the judge, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Special Counsel under paragraph (2), and shall have the same jurisdiction to grant to the aggrieved party such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a

decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the judge, the findings of the judge with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

"(4) INSTITUTION OF COURT PROCEEDINGS AS STAY OF JUDGE'S ORDER.—The commencement of proceedings under this subsection shall not, unless specifically ordered by the court, operate as a stay of the immigration judge's order.

"(5) INJUNCTIONS.—The Special Counsel may, upon issuance of a complaint under this section charging that a person has engaged or is engaging in an unfair immigration-related employment practice, to petition any United States district court, within any district wherein the unfair immigration-related employment practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon such have jurisdiction to grant to the Special Counsel such temporary relief or restraining order as it deems just and proper.

"(6) AWARDING OF ATTORNEY'S FEES.—In any proceeding under this subsection, the court, in its discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee as part of costs.".

Mr. HART. Mr. President, I ask unanimous consent that I may yield to the Senator from Oregon for the purposes of offering an amendment or making a statement without losing my right to the floor in the sequence of consideration of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Oregon is recognized.

Mr. HATFIELD. Mr. President, first, I thank the Senator from Colorado, Senator HART, for his kindness in yielding to me for the purpose of making a brief statement and in accommodating my particular schedule.

Mr. President, I express very great appreciation to the Senator from Wyoming, the chairman of the subcommittee, Senator SIMPSON, and also the managers of the bill and other members of that committee, for incorporating a number of changes in the employment verification system in order to assure the citizens of this country that S. 1200 was not going to allow a "back-door" implementation of a national identification system.

Two years ago, I offered an amendment which granted Congress a "legislative veto" power over any Presidential proposal to implement a national ID card.

Section 121 of S. 1200 provides Congress with 2 years notice before any "major change" can be implemented. And it gives Congress a second look by requiring a specific appropriation for any major change in the system of identification established by this bill.

Mr. President, I would like Congress to consider that this is not just some minor point or some peculiar preoccupation on my part about a national ID card, because I think we are heading toward that with the Social Security card as a national identifier, because of the rapid technology that we are experiencing and because we are blindly, I believe, stumbling into a centralized governmental data bank.

Rapid technological change is allowing the power of government to grow silently and subtly, but I think the public is far more aware of this than many in Government realize because a 1984 Gallup poll showed that half of Americans believed that they have little or no privacy because our Government can learn anything it wants to about them.

Eighty-six percent said they feared Government will use confidential information for unauthorized purposes.

I believe those fears of the American public are entirely justified, for let us be mindful of the fact that the Federal Government today stores 4 billion files relating to individuals. HHS and Education have over 1 billion such files. Treasury has almost 1 billion. Justice has 200 million, and the Selective Service has 11 million.

The average American today has 18 to 20 files held on him or her by the Government. His or her name will appear in an estimated 39 governmental databanks.

The Social Security number has become precisely what the system's founders swore it would never be, a national identification card.

Seventy percent of the States use the Social Security number for driver's licensing purposes. Many States use the Social Security number as the identifier for criminal records shared with the FBI, or for even high school recordkeeping purposes.

Depending on where you live, Social Security numbers have been required to give blood, cash a check, obtain a library card, install a telephone, or attend a party at the White House.

In this Congress, I will introduce legislation requiring private industry to inform the individual whether Social Security number disclosure is mandatory or voluntary under the law. Today, not even this minimal protection exists.

There was much ado last year about Orwell's vision in "1984". I think George Orwell missed the mark—Big Brother Government has a twin: Big Business.

Today, people do not realize that there are 150 million credit information files—data on more than half the U.S. population; hundreds of millions of files held by the medical profession, insurance companies, consumer groups, and personnel files of corporations.

More than half of the American labor force is now employed in occupations related in some way to gathering, storing, processing, interpreting, or disseminating information.

We have all heard that the economy is really shifting from an industrial base to an information society.

But let us be mindful that the threat to individuals from technological encroachments by corporate forces is greater because business operates under fewer constitutional restrictions.

What might happen to all of the interconnected databanks of corporations when the Government finds a compelling purpose to access those files?

Let me emphasize that already the Government is arranging to access credit files to find tax evaders. What happens when the Government's request for computer information is wrapped in the flag of national security?

I might also point out that technology is being used here to cover up for the Government's failure to have in place an enforceable tax system.

Mr. President, the relentless march of technology is outpacing our ability to legislate protective safeguards. Again, we must ask ourselves that second question: Are today's technological changes setting the stage for greater governmental power, and, if so, what are we doing about it?

This is really, I think, the fundamental issue and why I think it is so important that the committee under the leadership of Senator SIMPSON, Senator KENNEDY, and others, has really rendered a very important service to our people by incorporating this action in their section of this bill. I commend them for it.

But that does not solve the entire problem, and I will speak more to that at a later date when I introduce specific legislation curtailing the uses of the Social Security number, and improving the privacy protections.

So I shall ask my colleague from Wyoming, the manager of the bill and the chairman of the Subcommittee on Immigration and Refugee Policy, to engage in a colloquy with me on the intentions of Congress with respect to the provisions in S. 1200 pertaining to the employment verification system.

Subsection c of section 121 of the bill involves the regulation of changes in the employment verification system. I am concerned that the language in this subsection could be used to implement a national identification card system, and therefore I have a few questions for my good friend from Wyoming.

First, it is the intention of the committee that the Social Security card, by the enactment of S. 1200, is to be a national ID card? Will the administration be permitted to propose an expanded use of the Social Security card

without complying with the 2-year notice requirement of (A)(ii)?

Mr. SIMPSON. Let me make clear to my esteemed colleague from Oregon that this committee does not intend to institute a national ID card through the enactment of this legislation. The language of S. 1200 does permit the formulation of a counterfeit-resistant Social Security card but it does not authorize any expanded use of the Social Security card other than as specified in the bill in "Documents Evidencing Employment Authorization" section. Numerous experts and committees have concluded that the Social Security card in its present state is easily counterfeitable and needs to be improved. This bill allows that. But this bill does not in any way expand the permissible uses of the Social Security card number other than allowing it to be one of the documents which may be used to evidence employment authorization for purposes of determining employment eligibility.

Mr. HATFIELD. I thank my friend. My second question involves the institution of demonstration projects permitting the use of a telephone verification system. I have read the language of S. 1200 and I am assured that the President may not institute such a system without complying with the 2-year notice clause.

Mr. SIMPSON. The President could only undertake limited demonstration projects relating to such a system. Furthermore, such a demonstration project could last no longer than 3 years.

Mr. HATFIELD. Would my colleague tell me whether the language permitting the institution of demonstration projects allows the President to broadly grant demonstration projects which would in effect institute a telephone verification system, while side-stepping the 2-year notice requirement?

Mr. SIMPSON. No it does not.

Mr. HATFIELD. And the demonstration projects which might institute a temporary telephone verification system, limited in scope and effect, would still be subject to the privacy of information requirements of the bill?

Mr. SIMPSON. My friend from Oregon is absolutely right. In fact, all of the provisions of S. 1200 fall within the protection of the Privacy Act of 1974, as amended.

Mr. HATFIELD. I have one more question for my friend from Wyoming. He was very gracious in the drafting of S. 1200 to accommodate one of my major concerns; namely, that the President could not implement major changes in the system of identification authorized by this bill without those changes being specifically funded through an appropriations measure. I read (C)(ii) of subsection (c) as stating that no major change may be implemented unless Congress specifically provides appropriations for that change. Am I correct in saying that the executive branch of Government could not institute a major change as defined by S. 1200 without a specific line appropriation?

Mr. SIMPSON. Let me respond to the Senator this way: The committee does not intend to allow the executive branch, through the transfer of funds from one account to the next, or through the use of funds appropriated for general administration purposes, to implement a major change. Each appropriations committee will have an opportunity to specifically consider the level of appropriations for any major change proposed by the President.

Mr. HATFIELD. Mr. President, the Senator from Wyoming has satisfied my concerns and I have no further questions. Senator SIMPSON has been a defender of the individual's liberty and privacy throughout his years as a practicing lawyer and his years in public service, and he has struck a fair balance between those rights and the need for an enforceable worker employment verification system.

Mr. President, I thank the Senator from Colorado again for his kindness in giving me this window in this afternoon's schedule.

Mr. HART. Mr. President, I appreciate the remarks of the Senator from Oregon, and it was indeed my honor to accommodate his very busy schedule.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. Is the pending business the amendment laid before the Senate by the Senator from Colorado?

The PRESIDING OFFICER. Yes, it is.

Mr. HART. I thank the Chair.

Mr. CRANSTON. Mr. President, I share very deeply the concerns expressed by the distinguished Senator from Oregon [Mr. HATFIELD] and I associate myself with his statement.

I would dissent at only one point.

I know the committee has tried hard to eliminate the risk and fear of a legislative and administrative process leading to national identity cards or internal passports.

This bill is free of imminent danger in that regard, but it is a first step in that direction.

I remain deeply concerned that because I continue to believe that the procedures in this bill will not work, cannot work, and will not solve our immigration problems, Congress will come back and take the next step, and the next, until the threat that the Senator from Oregon and I, and others, fear the most—interference with the personal freedom of our citizens to work and travel freely in our society, will materialize.

The use of employer sanctions as a vehicle to enforce immigration laws is the critical first step.

I hope that the step will never be taken.

The "discretionary" employer sanctions in this bill will inevitably invite employment discrimination, but they will not be effective to deter illegal immigration.

Those employers who depend on them will not, under the sanctions in this bill, stop hiring them.

Employers will be burdened, but the sanctions are not strict enough to be effective.

Only by increasing the burdens on employers can the sanctions be made more effective.

I am not suggesting this.

I am merely pointing out one of the internal problems of this bill.

Without an identity card, it will be impossible for employers to comply with the provisions of the bill. There are, and I have elsewhere suggested, alternative means of discouraging illegal immigration.

Mr. HART. Mr. President, during consideration of the immigration legislation during the 98th Congress, together with Senator LEVIN I offered an amendment dealing with "alienage discrimination." The amendment is premised upon widespread concern regarding employer sanctions. These sanctions, I am certain, are not included with the intent of producing discrimination against Hispanics, or, indeed, any other minorities, for that matter, and resident aliens.

But a side effect of the sanctions may well be discrimination against individuals qualified by law to work, but who are unjustly prevented from doing so.

How would such discrimination be manifested?

Employers fearful of sanctions will discriminate against individuals by:

Refusing to hire resident aliens authorized to work;

Preferring citizens in the hiring process;

Forcing noncitizens to verify status with INS before considering applications.

Is it inconceivable that such unintended discrimination will occur? Of course not.

First, there is a climate of fear and ignorance in certain sections of this country about noncitizens. There does seem to be a general association of the problem of illegal immigration with resident aliens despite their having arrived in this country legally.

Second, employers do not understand the complexities of immigration law. They have:

Erroneously believed that prior bills became law, they did not. Yet, discrimination against resident aliens occurred;

They have erroneously believed that Simpson-Mazzoli applied to current hires;

They have refused to recognize valid work authorizations of all kinds, from temporary permits to green cards they thought had to be green;

Third, we have the problem of faulty INS recordkeeping. INS records are woefully incomplete for recent and long-term aliens. Worse, INS takes weeks, and sometimes months, to resolve errors which exist.

Now, the sponsors of the pending legislation may argue that recordkeeping provisions providing good faith safeguards on compliance gives the employer an affirmative defense.

That may be true, but this defense helps the employer, not the job applicant.

Employers will discriminate to avoid sanctions altogether rather than trust the workings of the good faith safeguards in the context of litigation.

To avoid these problems, the Senator from Michigan and the Senator from Colorado believe the bill should be amended. Additional language should provide what existing laws and safeguards do not: protection against discrimination on the basis of alienage.

Title VII does not cover alienage discrimination.

Section 1981 of the Civil Rights Act of 1866 is not a trustworthy guardian of alien rights.

The law does not prevent State and local governments from discrimination against aliens under the political community exception to traditional strict scrutiny under equal protection.

I ask unanimous consent that a Congressional Research Service memorandum of law detailing these deficiencies be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, July 15, 1985.

From: American Law Division.

Subject: Comments on Legal Issues Raised by Draft of Staff Report on "Alienage Discrimination in Employment and Age Discrimination Agencies."

Reference is made to the inquiry made relative to the above. Specifically, your staff asked that we review a copy of the aforementioned draft report, prepared by the staff of the Subcommittee on Immigration and Refugee Policy, and provide our written comments on the legal issues raised there. Basically, that report surveys current federal law and court decisions with respect to the prohibition of discrimination based upon an individual's alienage or non-citizenship status, the history of past attempts to include protections against such discrimination in the federal civil rights laws, and the opinions of selected experts as to the prevalence of alienage discrimination in our society. Based on its finding and analysis, the staff report makes the following general conclusions:

(1) "There is significant coverage of alienage discrimination under current law; (2) there is very little evidence that alienage discrimination occurs with any frequency, nor is it commonly held that employer sanctions will cause such discrimination to occur; and (3) there is nearly universal opposition among employment discrimination experts to creating a new anti-discrimination agency."

This memorandum will examine the case law and related legal analysis that form the basis for the staff report's conclusion in (1) above. Because almost wholly founded on opinions revealed by staff interviews with scholars and others working in the employment field, the empirical and policy underpinnings for the conclusion in (2) and (3) above are beyond the scope of these comments.

The draft report correctly observes that under Title VII of the 1964 Civil Rights Act,[1] "alienage" is "not . . . one of the prohibited forms of employment discrimination." It also notes that in *Espinoza* v. *Farah Manufacturing Co.*,[2] the Supreme Court refused to equate "alienage" with "national origin" discrimination, which is covered, except in those circumstances where "discrimination on the basis of citizenship . . . has the purpose or effect of discrimination on the basis of national origin." Consequently, Title VII may be of rather limited utility in combatting alienage discrimination in employment.[3]

The report, however, finds that there is "significant federal statutory and case law" banning alienage discrimination under, among others, the Civil Rights Act of 1866. As currently codified at 42 U.S.C. 1981, that law in relevant part secures to "all persons . . . the same right . . . to make and enforce contracts . . . as white persons." First enacted in 1866 to enforce the anti-slavery ban of the Thirteenth Amendment, only to be re-enacted in 1870 following ratification of the Fourteenth Amendment, § 1981 has most often been applied in modern times as a remedy for racial discrimination in contracts of employment, public and private. In *McDonald Douglas* v. *Santa Fe Trail Transportation Co.*,[4] the U.S. Supreme Court affirmed that § 1981 was intended "to proscribe discrimination in the making and enforcement of contracts against, or in favor of, any race." Less well settled, however, is the extent to which the Act provides a safeguard against discrimination on nonracial grounds.[5]

The staff report cites the Fifth Circuit decision in *Guerra* v. *Manchester Terminal Corp.*[6] for the proposition that "an employment practice which discriminate(s) on the basis of citizenship (is) prohibited by section 1981," and indeed this appears to be the highest court to so hold. While representing a possible majority view, a number of courts have held to the contrary, finding racial animus a necessary predicate to § 1981 action, and the issue would seem unsettled at best. The courts, moreover, have most often sustained challenges to alienage discrimination in state employment.[7] There is less consensus, however, as to the legal status of discrimination against aliens by private parties. In *De Malherbe* v. *International Union of Elevator Constr.*[8] the court, noting that the protection of aliens stems from the 1870 re-enactment of that statute under authority of the Fourteenth Amendment, concluded that state action was required. Similarly in *Ben Yakir* v. *Gaylinn Associated, Inc.*,[9] the district court dismissed a § 1981 alienage discrimination claim by an Israeli citizen, stating that "this court has decided on several occasions that claims under section 1981 that attack private acts must allege racial discrimination."[10]

Schlei & Grossman,[11] on whom the staff report relies for its conclusions as to the adequacy of the § 1981 remedy, do not appear totally sanguine in their views on the subject. "The major drawbacks for plaintiffs if they are required to enforce their rights under § 1981 are the absence of any administrative remedy, the more stringent proof requirements, and possible statute of limitations problems. Furthermore, § 1981 might provide protection only to persons who can claim that the nature of discrimination was based on racial or color characteristics."[12]

Mr. HART. Mr. President, the legislation must be amended to remedy this deficiency in current law.

The Senator from Colorado, along with the Senator from Michigan, offered an amendment regarding alienage discrimination when the immigration bill was considered by the Senate in 1983. Although our proposal was not adopted, a similar amendment was adopted by the House on a 404-to-9 vote. When the conference report died last year, Senator SIMPSON recommended a hearing on alienage discrimination prior to the passage of a new bill in the 99th Congress.

It is the understanding of the Senator from Colorado that such a hearing was scheduled for the upcoming day or the upcoming week or two. It now

---

[1] 42 U.S.C. 2000e *et seq.*

[2] 414 U.S. 86 (1973).

[3] One commentator, in discussing EEOC guidelines incorporating the *Espinoza* standards, put the matter thusly:

"A little reflection will indicate that this . . . in practice adds almost nothing to the general rule of nondiscrimination on basis of national origin. If the 'purpose' is national origin discrimination, the case is made with or without the alienage component. Similarly if a case can be made, by statistics or otherwise, that the 'effect' of an employer's citizenship requirement is to exclude a disparate proportion of Mexican-Americans, the same statistics would undoubtedly support a charge based on national origin discrimination as such, quite apart from the citizenship element. Accordingly, it is perhaps not surprising that no cases seem to have appeared since Espinoza and the revision of the guidelines in which a citizenship requirement has been relied upon by a plaintiff, on the theory that it was a pretext for national origin discrimination. Larson, *Employment Discrimination*, vol. 3, § 97.20 (Matthew Bender & Co. 1984)."

[4] 427 U.S. 273 (1976). *Johnson* v. *Railway Express Agency Inc.*, 421 U.S. 454 (1975).

[5] See, e.g., Schlei & Grossman, *Employment Discrimination Law*, pp. 675-8 (1983).

[6] 498 F.2d 641 (5th Cir. 1974).

[7] E.g., *Dougall* b. *Sugarman*, 339 F. Supp. 609 (S.D.N.Y. 1971), aff'd on other grounds, 413 U.S. 634 (1973); *Chavez-Salido* v. *Cabell*, 427 F. Supp. 158 (C.D. Cal. 1977), vacated and remanded on other grounds, 436 U.S. 901 (1978). Contra, *Cabell*, v. *Chavez Salido*, 454 U.S. 432 (1982).

[8] 438 F. Supp. 1121 (N.D. Cal. 1977).

[9] 535 F. Supp. 543 (S.D. N.Y. 1982).

[10] Cf., *Shah* v. *Mt. Zion Hospital & Medical Centers*, 642 F.2d 268, 272 n. 4 (9th Cir. 1981).

[11] *Supra*, note .

[12] *Id.*, at 325.

appears, as the Senator from Colorado understands, that even that hearing may have now been postponed. The problem is this: The hearing to deal with alienage discrimination will occur after the Senate completes action on the bill. This is why the Senator from Michigan and the Senator from Colorado are raising this issue at this time.

An administrative framework should be provided for litigating claims of discrimination on the basis of alienage. This framework would expand the authority of existing immigration judges and attorneys in the Justice Department.

The examples of discrimination against Hispanics, refugees, resident aliens, and others are known and well documented. The continuing problems with INS records are understood. The difficulties which employers have with understanding their obligations under existing imigration laws are legion. With the provision on employer sanctions contained in the pending bill, these problems will only grow worse.

The amendment which we are offering today is designed to focus public attention on this issue. It will offer our colleagues an opportunity to consider some of the issues which should be covered during the hearing next week. And, it will enable the Senator from Wyoming to discuss further how this issue might be handled.

First, the amendment bars unfair immigration related employment practices against individuals on the basis of their national origin or status as a U.S. citizen, permanent resident, refugee, asylee, or legalized temporary resident.

Second, the amendment establishes an Office of Special Counsel to investigate charges of discrimination based on the claimant's immigration status.

Third, the amendment empowers immigration judges to issue cease and desist orders if the judge determines that an employer is engaging in an unfair immigration-related practice.

This amendment does not establish a new bureacracy. The Special Counsel will be located in the Department of Justice.

The process is not open-ended. The amendment provides for a 90-day period for the Special Counsel to take action.

There will be no overlap between the Special Counsel and the EEOC. An individual will have the option of filing a claim with the EEOC or the Special Counsel, but not the ability to file before both, concurrently.

Discrimination against individuals on the basis of national origin does exist. The record is replete with examples, under current law, of firms "playing it safe" by checking only Hispanics for proof of work authorization. Playing it safe by refusing to hire Hispanics or other minorities. Playing it safe by checking Latinos for green cards. That, Mr. President, is not right. And the presence of employer sanctions can only make this situation worse.

Mr. President, this issue is important. It is, in fact, fundamental. And it is, in fact, one of constitutional rights and of civil liberties. It is a question of justice for people who are vulnerable to indignities and discrimination which the majority of Americans will never know.

In earlier debate, the Senator from Wyoming evinced some interest in working this problem out. I would appreciate hearing his reaction to the proposal of the Senator from Colorado and the Senator from Michigan on what we believe and many outside this Chamber believe to be one of the most serious problems that this legislation contains.

Mr. LEVIN. Mr. President, first I wish to commend my friend from Colorado and associate myself with his remarks.

As our friend, the chairman of the Subcommittee on Immigration, knows, I have been concerned about the possibility that employer sanctions will result in discrimination against legal aliens and American citizens. I entered into a brief colloquy with the chairman and the majority leader on Tuesday evening in which they agreed that the issue of discrimination is an important part of the issue of immigration reform and that the issue should be addressed by the Senate before the conference on any immigration bill begins.

Those of us who are concerned about this issue had requested that a hearing be held on employer discrimination. The chairman has agreed to hold a joint hearing with the House on the issue of employment discrimination. The joint hearing will provide a record in debuting this issue and determining the best apparatus for addressing the discrimination problem created by this bill. Senator HART and I and others who requested the hearing had hoped that the hearing would take place before the Senate considered S. 1200. In light of the fact that we are now moving forward on S. 1200, it is important that a legislative record be established in the Senate which reflects the importance of this issue and our intention to further pursue a legislative remedy after the joint hearing.

Mr. President, two types of discrimination may result from employer sanctions. First, employers seeking to avoid the consequences of hiring illegal aliens may simply refuse to hire foreign looking or foreign speaking persons. This type of discrimination—discrimination based really on national origin—is already covered by title VII of the 1964 Civil Rights Act which prohibits discrimination on the basis of national origin. There are, however, a number of major gaps in title VII coverage. As a result of these gaps in coverage, the potential for discrimination against foreign-looking persons which arises under this bill will not often be remediable. This is because title VII does not cover discrimination by employers who hire less than 15 workers and title VII does not cover discrimination for those hired for less than 20 weeks, which excludes most agricultural workers. Thus, title VII does not adequately protect those persons who may be discriminated against as a result of the employer sanctions established in S. 1200.

Second, prospective employees may be discriminated against on the basis of their alienage as a result of the employer sanctions provisions in S. 1200. Because the bill makes it unlawful to knowingly hire illegal aliens, employers may simply refuse to hire persons who are not U.S. citizens, although they are legally in the United States. While the bill establishes an affirmative defense to the charge of unlawfully hiring an illegal alien if the employer verifies that the employee is not an illegal alien, many employers may find it safer and easier to adopt a policy of refusing to hire persons who are nor U.S. citizens, although those persons are legally in the United States.

Mr. President, title VII does not prohibit discrimination based on alienage. In 1983, at Senator HART's request, the American Law Division of the Library of Congress prepared an analysis of the existing protections against discrimination based on alienage. In the analysis, Charles V. Dale stated:

> Another potential limitation on the effectiveness of a title VII remedy in the present context may be the Supreme Court ruling in *Espinoza* v. *Farah Manufacturing Co., Inc.* Although title VII renders national original an unlawful basis of discrimination, the Farah Court declined to find congressional intent to make discrimination against aliens in private employment unlawful. In a suit against an employer for failure to hire a Mexican citizen solely because of her alien status, the court unqualifiedly held that employment discrimination based on non-citizenship is not covered by title VII.

Mr. President, there is a need to provide some mechanism which will allow persons who are discriminated against by employers as a result of employer sanctions to obtain redress. The Senator from Wyoming has said that the issue of discrimination based on alienage is a "vexing, puzzling" one. I agree. The complexity of this issue should not prevent us from finding a legislative solution to any new discrimination which might develop as a result of employer sanctions before final approval of this legislation by the Congress.

The joint hearing to be held on the issue of employment discrimination will provide us with the detailed information we need.

Under an agreement reached Tuesday night between the majority leader

and the floor manager, we will be able, as a practical matter, to pursue this matter legislatively after the hearing and before any conference occurs with the House on immigration legislation. That is as it should be, because we cannot, in good conscience, finally approve legislation which imposes sanctions on employers for hiring illegal aliens without also providing remedies for those people we want to protect, who are discriminated against as a result.

Again, I congratulate my friend from Colorado for his leadership in this issue, his determination that we find a way of resolving it in a way that will help us do so successfully and effectively and not be counterproductive to our cause. That is what he is about here this afternoon, and I congratulate him on that strategy.

Mr. President, I ask unanimous consent that a letter from the Mexican American Legal Defense and Educational Fund to Senator SIMPSON regarding employment related discrimination be included in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

MALDEF,
Washington, DC, July 16, 1985.

Hon. ALAN K. SIMPSON,
Chairman, Subcommittee on Immigration and Refugee Policy, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Please accept for your consideration this report and analysis on alienage discrimination in employment. This report carefully examines the extent (or lack) of protections to remedy discrimination against persons legally admitted to the U.S. who are eligible to work, but who are not American citizens. It also sets out numerous examples of existing discrimination against legal resident aliens and why we believe employer sanctions will exacerbate this problem.

Not surprisingly, our conclusions differ from those reached by your staff in their report to the Judiciary Committee. The staff report, rather than resolving questions that could be addressed in a hearing, points out the need for a hearing. Let me summarize a few of our findings.

1. Title VII does not protect individuals against discrimination on the basis of alienage, unless it is a pretext for discrimination on the basis of national origin. *Espinoza* v. *Farah Manufacturing Co.*, 414 U.S. 86 (1973). On this point we agree with the Staff Report on Title VII's coverage, although we note that national origin discrimination protections will not adequately protect legal resident aliens from discriminatory practices.

2. There is a serious dispute among the federal circuits and legal scholars whether Section 1981 of the Civil Rights Act of 1866 protects persons from discrimination on the basis of alienage.

This findings contradict the findings of the Staff Report. The Staff Report concludes that Section 1981 provides a remedy against alienage discrimination, citing *Guerra* v. *Manchester Terminal Corp.*, 498 F.2d 641 (5th Cir. 1974). To be sure, MALDEF wishes such was the state of the law. Unfortunately, at least two circuits have rejected the *Guerra* analysis and hold § 1981 does not provide a remedy against alienage discrimination, *see DeMalherbe* v. *International Elevator Construction*, 438 F.Supp. 1121 (N.D.Cal. 1977).

However, it is interesting that your staff has concluded that *Guerra* settles the issue and provides a remedy against alienage discrimination, yet does not support codifying the *Guerra* holding to explicitly prohibit alienage discrimination.

In any event, the dispute between circuits and legal scholar makes the law unclear, this should be clarified with language making alienage discrimination unlawful.

3. The problem of alienage discrimination is a real problem and prevents legally admitted resident aliens from many employment opportunities. We present a number of examples in the enclosed report.

4. It is clear from the House debates and from the Conference Committee debates that there is a consensus that any employer sanctions provision must include some form of anti-discrimination measures. The extent of the discrimination problem, and the extent of the measures needed to remedy the problem must be examined fully in a hearing on the issue. You yourself cited the lack of hearings on the issue as the reason for your reluctance to agree to many of the anti-discrimination measures proposed by the House conferees. How can you now proceed to a markup without having held at least one day of hearings on the discrimination issue?

It is important to note the problem of discrimination is not a "Hispanic" problem. While most of the examples delineated in our report involve Hispanics, many other immigrant groups will face discrimination of different sorts as a result of S. 1200: Asians, Haitians, Israelis, Poles, Pakistans and others.

It is also important to note that alienage discrimination also affects persons with different kinds of legal statuses. Refugees legally admitted to the U.S. are eligible, and encouraged to work and support themselves. Persons who apply for legalization may be required to be employed to avoid exclusion under the "public charge" provision. Permanent resident aliens who have waited patiently for legal admittance should also be allowed full opportunities in the work place.

To create a law which will cause employers to scrutinize and reduce the employment of aliens without adequate protections from such discrimination is bad enough, but to proceed with such legislation and not even hold hearings on the discriminatory impact of the legislation and the extent of anti-discrimination protection is unfair.

I, therefore, ask that you carefully consider the analysis and conclusions of the report; and I again respectfully request that hearings or consultations be held on the issue of discrimination.

Respectfully submitted,
RICHARD P. FAJARDO,
Acting Associate Counsel.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER (Mr. MURKOWSKI). The Senator from Wyoming.

Mr. SIMPSON. Mr. President, again that has been a thoughtful review of a tough and puzzling issue. I remember well the Hart-Levin amendment or the Levin-Hart amendment in the last debate on this issue. What we are talking about is a new set of machinery in the Federal Government, a set of machinery that was rejected in previous civil rights legislation. I think that is what people want to remember here. This is in essence, if I am not mistaken, and I ask the sponsors if I could be corrected, the Frank amendment or great parts of the Congressman Barney Frank amendment, my former colleague from Massachusetts. Is that not what is embodied here?

Mr. HART. My recollection of the sponsorship in the House is not quite clear, but it is the amendment passed overwhelmingly by the House.

Mr. SIMPSON. I thank my friend and neighbor from Colorado. It was presented to the House on the basis that it was an antidiscriminatory piece of legislation, and indeed it is. It passed overwhelmingly very late one evening after another significant vote that preceded it. That is the Hart-Levin amendment proposal.

I say to you that the machinery in it, and what it creates, a separate system within the Government, a separate agency, was rejected during the civil rights debates of the past or it would have been part of the civil rights laws of the present.

I have always resisted it on the basis that if we are going to do civil rights legislation, let us do it, but let us not do it on an immigration reform bill where now, especially with what Senator KENNEDY has proposed and I have agreed to, there is a remarkable assurance that discrimination will not take place.

Again, I want to be sure that everyone is hearing clearly what we are talking about. We are not talking about discrimination based upon color of skin or national origin. Those things have been covered so magnificently by Congress in the past and will in the future remain covered.

We are talking about the thing called discrimination based on alienage, which is puzzling to scholars, and so, in a sense, vague, that some of the great civil libertarians of both Houses of Congress have not even dealt with it in the past 20 years. That is what makes it such an extraordinary, puzzling issue.

To do it in an example form so that people really do understand what we are talking about is very simple: I am an employer and two people are standing before me for a job. One is a United States citizen and the other a Canadian with a green card allowing him to work in the United States. I pick the U.S. citizen. I am subjected to a suit through the machinery of my Government by the permanent resident alien on the basis that I have discriminated against him or her on the basis of their alienage.

I do not think the American people are ready to favorably consider that and its ramifications.

The other ramification is if you have a colony of permanent resident aliens who like to hire permanent resident aliens, they will no longer be able to do that. They must hire U.S. citizens.

That is why we are going to have a hearing on it—because it is absolutely necessary we have a hearing on it. That is going to be a joint hearing. Congressman MAZZOLI and I are going to hold that hearing. It is my understanding it has been set.

I wish it could have been done before we proceeded on this bill, but all of us who have legislated know that as these windows flop open and close in this curious arena, you grab the hook as it goes by. We are going to be on the farm bill and the Superfund, and so on. The immigration window opened and we proceeded.

I have assured my colleague for Michigan and I assure my colleague from Colorado that will have another window for presentation of their concerns after we review the transcript of that hearing—either a resolution, a sense-of-the-Senate resolution, or whatever may be required to address the issue of discrimination based on alienage. The proposed amendment deals with both national origin and alienage discrimination. The bill, especially as amended by Senator KENNEDY, offers extensive protection against national origin discrimination:

First, an employee who complies with the verification procedures is afforded an affirmative defense against the penalties.

Second, an employer who wishes to discriminate is still subject to the penalties of the Civil Rights Act of 1964.

Third, the bill requires GAO to monitor the implementation of employer sanctions and report on any discrimination.

Fourth, if a pattern of discrimination arises, an antidiscrimination task force must develop legislative recommendations that are reviewed by the Congress in 60 days.

The ultimate solution is the new antidiscrimination procedure: Special provisions to permit the Congress to act to repeal or amend employer sanctions in a 30-day expedited procedure.

Mr. HART. If the Senator will yield, by way of response, first, I hope and I am sure the Senator from Wyoming did not intend to say that he sensed that the American people were not ready to address this issue, that we as parliamentarians and political leaders should address it, so far as the situation with respect to civil liberties is concerned. We have taken an oath to address issues of that sort to protect even one individual if a constitutional right is in question. In this case, this amendment is designed to address constitutional rights. So I do not think the Senator from Wyoming would want to press hard the argument that he senses that the American people are not willing or prepared for us to face this issue. That is beside the point.

Second, at issue here is not the good will and intention of the Senator from Wyoming and the Senator from Massachusetts. In fact, if we all could be assured that every discrimination question under this bill would be addressed by a forum of Senator SIMPSON and Senator KENNEDY, I think we would be satisfied that questions of discrimination would be fairly judged and liberties would be guaranteed. But we are going to turn this bill over to an administration of nameless and faceless people who may not have the same good intentions as the Senator from Wyoming and the Senator from Massachusetts. So what their intentions are, in the long run, so far as the individual on the street is concerned who is looking for a job, will matter very little.

Finally, to say that this machinery was considered in civil rights legislation in the 1960's and was rejected is irrelevant, with all due respect, to the argument before us. During the civil rights debates, we were not discussing labor relations or employer sanctions. We are discussing them now. All civil rights issues for all time were not resolved in the 1960's. As we legislate the rights and interests of citizens and noncitizens for years to come, we will have to address civil rights problems.

Even though the machinery created by this bill, not a bureaucracy but a limited capability, might not have been accepted in the 1960's, it does not mean that it should not be accepted in the 1980's in conjunction with new legislation affecting civil rights and liberties of citizens and noncitizens in this country.

Mr. SIMPSON. Mr. President, I would only add that we have given to permanent resident aliens the right to work in this country, the right to be employed. That is our promise to them when we give them the card, and we must meet that commitment.

What I say again to the Senator is that the American people would have difficulty understanding why you cannot have the hiring of a U.S. citizen over a permanent resident alien. You may not agree with that, but I submit that that has some bearing out in the real world, which is very simply addressed to the constituents that the Senator and I know from the West. For example: "What do you mean, I can't hire a U.S. citizen over a permanent resident alien if I want to and not have the Government sue me?" That is what I am speaking of.

Mr. HART. This amendment does not prevent that.

Mr. SIMPSON. This amendment indeed leads to that, and I have a problem with that.

The issue is that you do have to hire a permanent resident alien who is entitled to work right next to a citizen, but you do not need an entirely new Special Counsel of the United States of America, an agency-sized bureaucracy, and that is exactly what this amendment proposes. It is a Special Counsel system that has been presented each time during the civil rights debates and has been rejected each time in the civil rights debates. That is what I want to express; that is what I want to make clear.

If we are talking about the civil rights of the United States and the status of civil rights problems, the most grievous one in the United States is having no legislation. The most grievous civil rights violations in the United States in this area are taking place because we have nothing on the books. It is legal to hire an illegal, but it is illegal for an illegal to work. That is the law of the United States.

There are 2 to 12 million human beings wandering around in a never-never land, who are afraid to go to a hospital, except for a birth, afraid to go to an employer because they will be bounced out on their can. They are left out of consideration each time we try to kill this legislation. So do not miss the whole issue on immigration reform.

Mr. HART. I am sure the Senator knows that those sponsoring this amendment are not trying to defeat this bill. If we were, we would be arguing against the bill, and we are not doing that.

We are not trying to prevent a situation in which an employer can hire a citizen in this country and not be sued in the process. We are trying to avoid a situation where an employer gives the sanctions automatically, dismisses a resident alien who is entitled to work, and particularly in situations where that resident alien is brown, black, or Asian.

The Senator has admitted that this is a problem. He does not like our solution, but we have not yet heard anything that is.

Mr. SIMPSON. We have a magnificant solution which was adopted earlier this morning, and I hope we can see the naked truth, and we will follow it closely, which is our job.

Mr. SIMON. Mr. President, will the Senator yield?

Mr. SIMPSON. I yield.

Mr. SIMON. As the Senator knows, I am new to this field, and I have been struggling with it. We are in the unusual situation of voting on a bill now and having hearings on the question of discrimination after we vote on the bill.

Candidly, I do not know whether the Hart-Levin amendment is the right answer or the wrong answer. But if we do not have some kind of tool to deal with this when we go to conference,

we will be in an exceedingly awkward situation.

It seems to me that we ought to be putting something on the books here so that when we go to conference, we can deal with this issue. If we fail to do that, we are really ducking what I sense is a very fundamental problem.

I do not have good answers to the questions of the Senator from Wyoming. I do not know whether the Hart-Levin amendment provides good answers. I hope that in the hearing we will come up with some. But I do not want to see us go to conference saying this is not a problem and we are not going to do anything.

Mr. SIMPSON. Mr. President, I have watched the work of the Senator from Illinois, and we are pleased to have him on the subcommittee. What he says is very authentic, and I hear it that way.

I wish it could be handled differently, but in this situation it could not be.

I assure the Senator, and it is obvious, that we are going to have a joint hearing on the issue of discrimination based on alienage. When we have it, it will be the first time in the history of the United States that we have held it. I have culled the records of the House of Representatives and I have culled the subcommittee's activities and the committee activities of a group of Congressmen of both parties, for whom I have the deepest respect, true civil libertarians; and there are about four paragraphs of references in the last 20 years to anything about discrimination based on alienage.

So it needs a full hearing, and it will have one. The House will have it before they proceed with immigration reform, and I know they will, because Representative RODINO has a bill, Representative LUNGREN has a bill, and Representative ROYBAL has a bill, and there are other bills they will process. They will deal with it. It will be the subject of conference activity, and it will be the subject of my activity, because I have assured Senator LEVIN that we will do something with it at the conclusion of the hearing.

Mr. LEVIN. Mr. President, if the Senator will yield, I want to make that point.

I think it is important to all of us that we did get the assurance from the Senator from Wyoming and the majority leader the other night that there would be a legislative window prior to any conference, where we could offer a bill, a resolution, or a sense-of-the-Senate resolution we thought appropriate and which we could debate at that time.

A window has been assured to us, and we can thank the Senator from Wyoming and the majority leader for arranging that window and making it available. That is something. I think it is significant to us.

We all agree that the logic here would have been better served if we had the hearing first and then the debate on the floor. We have accommodated that reality the best we can.

The Senator from Colorado made one critical point: That it is not the question of whether an employer picks a citizen over an alien that is at issue here. The issue is the new element of employer sanctions and whether or not an employer might not hire an alien just because it is safer, rather than because he would rather hire a citizen. It is not the question of two people standing in front of the employer. It is one person standing in front of the employer. It is the legal alien standing alone in front of the employer, not with a citizen at his side and the choices being presented. But the employer, taking the safer route, would say, "I don't want to hire you anyway, because you're not a citizen, even though a citizen is not competing with you for the job."

I agree with the Senator that it is a puzzling situation, and I appreciate the problem as to where the American people would be with regard to the juxtaposition of the two. It is troubling to many of us.

The other point is that I hope the hearing will not only address the alienage issue, so-called, but also the gap in title VII coverage, because here I think there would be unanimity.

We do not want people discriminated against because they look or sound foreign. Title VII prohibits that under national origin discrimination provisions, but it does not prohibit that for part-time workers, and it does not prohibit that for people who are applying to firms that hire less than 15 people.

So there are major gaps in the existing protections, and those protections, we find, will not be applicable; and we are very much concerned about any additional national origin discrimination which might be created as a result of these sanctions which would not have a remedy under title VII. I hope my friend will include that in the hearings which are coming up.

Mr. SIMPSON. Mr. President, I can assure you that that will come into play simply because of the confusion of terms. When we talk about discrimination based on alienage, people think we are talking about discrimination based on national origin. We have a most extraordinarly well-developed record on discrimination based on national origin, ethnicity, and color of skin. That is what we have been up to. That is what I have been up to for 4½ years. I have had 10 hearings or more, held by the subcommittee in the last 4½ years, that deal with discrimination based upon national origin, ethnicity, and color of skin.

It has been part of the civil rights debate for many years before I came here. There is no question about that. Information about a job applicant's alien status is not relevant to employer sanctions; only the employee's illegal alien status is what we are talking about with employer sanctions.

If an applicant can show citizen status, the employer will not be subject to sanctions for hiring the applicant. However, neither will the employer be subject to sanctions if he hires an applicant who can show legal alien status. That is what the bill says. That is what is here.

Therefore, knowledge of an applicant's alienage will not cause an employer who has no desire to discriminate against illegal aliens to begin to do so. But I assure my colleague that I will keep that in mind and embrace that as we go on into the hearing process in future legislation.

I thank the Senator from Michigan.

Mr. KENNEDY. Mr. President, I want to indicate that I fully support the objectives of the amendment offered by Senators HART and LEVIN. I also share the view of Senator SIMPSON that it is an extremely complex issue which came up late in the last Congress and helped to stall the conference committee's consideration of the immigration bill. Its full implications could not be determined.

That's why joint hearings have been scheduled, at my and several Senators' request, next week. I regret we had to begin consideration of this bill before we got the benefit of these hearings—but they are scheduled, and we will have the benefit of their results before final action on this legislation is taken by the House conference committee.

So, Mr. President, I support the objectives of the amendment and I am still hopeful we can work out a compromise.

Mr. BINGAMAN. Mr. President, I would just like to offer a few remarks while we are on the issue of discrimination, which is likely to result from the employer sanctions provisions of this bill.

A major concern of mine regarding S. 1200 deals with the lack of adequate protections to those American citizens who do not "look American," in particular those of Hispanic descent.

I am sure my colleagues are in agreement that we are opposed to discrimination and that we do not want more to occur as a result of this legislation.

However, I am not assured that we have afforded the necessary civil liberty protections to our minority Americans.

S. 1200 relies on the use of employer sanctions as a means to deter the influx of illegal aliens, and I agree that some method of deterrence must be instituted. But I believe that S. 1200 as now written takes this approach in the national interest, at the expense of individual constitutional rights.

Having recognized the possibility of discrimination, I believe we have an obligation to these Americans to take action now to minimize that possibility and to provide a reasonable process for redress of grievances that will surely arise.

Because of this concern I and several of my colleagues requested of the distinguished chairman of the Immigration Subcommittee a hearing on the issue of employer sanctions and discrimination.

I am very pleased that Senator SIMPSON has agreed to a joint hearing on September 18, next Wednesday, however it appears that we will be voting on final passage of S. 1200 without the benefit of that hearing record.

Therefore, at a minimum we need to improve what is in S. 1200 and I rise in support and am a cosponsor of Senator HART'S amendment to try and achieve some recourse for those who feel a violation of their rights due to employer sanctions.

As a Senator who comes from a State with a 1,950-mile border with Mexico, I am well aware of the opportunities and problems this situation creates. The problems are considerable: Air and water pollution, violence, drug trafficking, depressed economic conditions, and what we are trying to address today; immigration control and access.

I have serious reservations about the workability of employer sanctions and their unintended impacts, and I believe that we are only beginning to hear about the "weeding out" of illegal aliens by employers. I would hope that this body would give serious thought to supporting Senator HART'S amendment.

Mr. HART addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, it is certainly not the intention of those offering the amendment to defeat or hinder much-needed reform in the area of immigration legislation. Someday, hopefully soon, legislation will pass which is fair and balanced and the Senator from Wyoming will receive the credit he deserves for the years of long toil he has put into one of the most vexing public policy problems and challenges this country faces.

The sponsors of this amendment simply seek to avoid the situation where, once that day comes, either on an individual case basis or, even worse, or a firestorm basis, unintended consequences of this legislation lead to either wholesale discrimination of legal residents of this country, regardless of what the Senator says, primarily because of the color of their skin or the fact that they come from a nonwhite part of the world or an equally challenging situation of the sole individual who is discriminated against unfairly and unjustly. The Senator from Wyoming does not want that, nor do the sponsors of this amendment.

The sponsors of this amendment also do not want a highly negative vote on an issue we merely wish to preserve for the future. We do not wish to give up on this fight, as the Senator from Michigan said. The Senator from Wyoming very graciously agreed that the near term situation is required to guarantee that right.

I think the Senator from Michigan agrees that putting this question to a vote at this time and perhaps not receiving a majority vote or a strong vote in its favor might jeopardize that case. Therefore, with the agreement of the cosponsor of the Senator from Michigan, I withdraw the amendment.

Mr. SIMPSON. Mr. President, I thank the Senator from Colorado and I shall surely work with him to achieve the goal he speaks of, as I shall with the Senator from Michigan.

The amendment No. 606 was withdrawn.

AMENDMENT NO. 607

(Purpose: To prohibit an officer or employee of the Immigration and Naturalization Service from entering a farm without a properly executed warrant)

Mr. McCLURE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. McCLURE], for himself and Mr. DECONCINI, Mr. GRAMM, Mr. SYMMS, Mr. CRANSTON, and Mr. BINGAMAN, proposes an amendment numbered 607:

On page 116, between lines 16 and 17, insert the following:

SEC. 304. POWERS OF IMMIGRATION OFFICERS AND EMPLOYEES.

Section 287 of the Immigration and Nationality Act (8 U.S.C. 1357) is amended by adding at the end thereof the following:

"(d) Notwithstanding any other provision of this section (other than paragraph (3) of subsection (a)), in the enforcement of this act an officer or employee or the Service may not enter onto the premises of a farm or other agricultural operation without a properly executed warrant."

Mr. McCLURE. Mr. President, this amendment to the Immigration Reform and Control Act of 1985 (S. 1200) would require the Immigration and Naturalization Service [INS] to obtain a properly executed search warrant prior to entering a farm or other agriculture operation.

Currently, INS agents must obtain a warrant before entering any place of business with the exception of farms and ranches. This exception must not be allowed to continue. Farmers should be afforded the same rights and standards of protection that every other businessman enjoys under the fourth amendment of our Constitution which guarantees protection from unreasonable search and seizure.

Similarly, every farm worker is entitled to the same protection as every other worker in our society against the disruption that occurs when there is unwarranted and sometimes warrantless—without warrant—search of farm premises.

Simply because a farm is an easy mark offering the simplest and most cost efficient means of reaching quota objectives is no reason to apply a different set of rules. The lack of a search warrant requirement allows INS agents to concentrate their enforcement activities on agriculture, where 8 to 15 percent of the illegals in the country are currently employed. Although this small amount of undocumented workers are employed in agriculture, fully 50 percent of undocumented workers picked up by INS agents in the interior of the country are captured while working in agricultural occupations.

These figures show a distinct bias in INS enforcement activities and serve notice that farmers and farm workers are not receiving equal protection as envisioned in our Constitution. The INS contends that farm lands are "open fields" and their agents need not obtain consent or show probable cause that some criminal activity is occurring prior to entering a farmer's fields. Simply because they see a group of people working in a field, they operate under the assumption that those people have gained entry into the United States illegally. It is not until the agents enter the field that an illegal versus legal status can be determined.

Harassment of agricultural employers and employees by the INS has gone on for years. Harvesting operations have been disrupted when time was of the essence merely by the proximity of INS agents.

My amendment does not establish protection or set a precedent for farmers; it just guarantees them the same rights and privileges enjoyed by every other employer in our Nation. Likewise, employees will be protected from the humiliation of impulsive interrogation by the INS.

This legislation is needed, it has been passed by this body before by a vote of 2 to 1. It continues to be needed. Our system has failed in an important civil obligation, and if we are to live under the guaranteed proposition of the fourth amendment we must now take steps to correct this blatant injustice.

Mr. President, I do not intend to take long in the debate of this amendment because I believe all Members of the Senate are aware of the issues that are presented by the amendment and desire to correct it. While I understand that the Senator from Wyoming, the manager of the bill, will oppose the amendment upon the en-

treaty of the INS, I think it is important if we are going to have civil liberties guaranteed in this country that indeed, we should pass this amendment. This amendment has been cosponsored by original cosponsors DECONCINI, GRAMM, SYMMS, CRANSTON, and BINGAMAN. It is a bipartisan proposal on the part of those who joined me in this in an effort to guarantee that the civil liberties of those who work in the fields are just as important as the civil liberties of those who work in the factories.

Mr. DECONCINI. Will the Senator from Idaho yield?

Mr. MCCLURE. Mr. President, I am happy to yield.

Mr. DECONCINI. Mr. President, I am happy to support the amendment offered by Senator MCCLURE to require that our Nation's farms be treated just like other businesses and our Nation's farmworkers be treated just like other workers.

The amendment would require that agents of the Immigration and Naturalization Service and Border Patrol obtain a search warrant before they enter the premises of a farm or other outdoor agricultural operation. This amendment would overturn the so-called open fields doctrine which both agencies currently follow.

Before INS or Border Patrol agents enter a business such as a restaurant or textile mill, they must comply with the fourth amendment to the U.S. Constitution and obtain a search warrant. Search warrants are thus required in all industries other than agriculture. Contrary to common belief, these other industries employ the vast majority of illegal aliens employed in the United States. It is estimated that only 15 percent of employed illegal aliens are employed in agriculture. Yet 50 percent of the apprehensions occur in agriculture. It is obvious that INS and the Border Patrol have singled out agriculture for a much higher proportion of their attention because it is simply easier to apprehend people if you do not have to have a search warrant to enter the property on which they work.

This singling out of agriculture for special treatment is unfair to both the employees and the owners. In my opinion, it is also a violation of their constitutional rights.

Opponents of this amendment will argue that the "open fields" doctrine has been upheld by the Supreme Court. That decision, however, was rendered in a case involving the growing of illegal substances—marijuana—in a field, not the investigation of the presence of illegal aliens.

I contend there is a big difference between entering a field because you have a reasonable suspicion that illegal drugs are being grown there and entering a field simply because the workers on it have brown skin or a national origin from south of our border. The open fields doctrine as currently interpreted by INS and the Border Patrol does not require that agents have any probable cause to believe that illegal activity is taking place. There is no standard or requirement of probable cause.

There have been repeated instances of injuries and even deaths occurring to aliens fleeing these open field searches. These instances could be curtailed if the employer was allowed to participate in the search upon presentation of a search warrant as is the case in other businesses.

Opponents of the search warrant amendment have been unable to show that it will hinder legitimate enforcement activities. Several studies, including a recent one conducted by the National Center for State Courts, have shown that obtaining search warrants is not a deterrent to effective law enforcement.

The INS is busy outside the Chamber trying to buttonhole Members to insist that this amendment is going to curtail their ability to apprehend illegal aliens. The requirement of a search warrant does not hamper their efforts in all other business. The INS does not want to give proper Constitutional rights either to owners or to the potential undocumented aliens in agriculture. I have to conclude that they have accepted, perhaps unwillingly, the constitutional requirement to obtaining a search warrant whenever entering or desiring to enter any other businesses for the purpose of inspecting to see if illegal aliens are present.

Mr. President, I believe that it is important that our agricultural operations be treated equitably with other businesses.

I urge my colleagues to join in support of Senator MCCLURE's amendment and I am pleased that he has offered it once again.

I truly hope that the manager of the bill, the distinguished Senator from Wyoming, could see fit to accept this amendment, I know how strongly he feels about law enforcement and civil rights. I think that this amendment is consistent with his strong civil rights position and I am sure that he does not want a discrepancy as to the use of a warrant.

So I urge my colleagues and the manager of the bill to accept the amendment.

I thank the Senator.

Mr. SIMPSON. Mr. President, it is a harrowing position to rise in opposition to the American Farm Bureau and the American Civil Liberties Union. You really have a difficult time when you get into that particular pair of pliers. I have been there before and may return to the fray somewhat emaciated and decimated after we get through with this amendment, but I am going to speak against it anyway because I feel very strongly that even though I agree with the intensity and the feeling that is expressed, the fourth amendment limitation on unreasonable searches and seizures does not require a warrant to enter open fields.

The fourth amendment of the Constitution protects against unreasonable searches and seizures of "persons, houses, papers, and effects." And the Supreme Court, in April 1984, under the case of Oliver versus United States, ruled that the requirement for a search warrant does not apply to open fields.

There is absolutely no constitutionally protected right of privacy regarding open fields. Extending protection to open fields is not what drafters of the fourth amendment intended, and it would affect many areas of law enforcement.

The INS is not the only agency that is allowed to enter open fields without a warrant. I believe both Senator MCCLURE and Senator DECONCINI were prosecutors in their other lives. We have drug enforcement agency people who require searches of open fields without a warrant. We have local police who may enter open fields to look for drugs as was the situation in the Oliver case. We have officers of State, municipal, and local government, and Federal agencies who need to have a warrantless search of open fields, not just for workers and particularly agricultural workers, but to check for drug abuse situations, for burial of corpus delicti, other things such as that, or pursue a landing airplane suspected of carrying illegal substances or illegal aliens which is the norm now.

But let me share with you, as I conclude my arguments against the amendment, the INS does already require a warrant. They require a warrant to enter any factory, any business, or any residence. And this is important: They require a warrant to go into any farm house, any barn, any packing shed, any farmyard, and any other building contained in an outdoor agricultural operation. They require a warrant.

That was recently reaffirmed in a case in the ninth circuit this year, Le Duc versus Nelson.

This amendment would severely hamper the INS's ability to enforce immigration laws, while the American public overwhelmingly supports an end to illegal immigration.

The amendment, I think, sets a dangerous precedent for other law enforcement efforts, particularly for narcotics and controlled substances violations.

I guess the real irony for me is this: Under S. 1200 or under the proposal yesterday, we are trying to do something for agriculture employers. We

are trying to do something important so they can stay in business with perishable crops, not so very important perhaps with regard to the six basic commodities. We all recognize that in the debate.

Agricultural employers here, then, are at the point where they are requesting special Federal assistance. Unless I am missing something, this is what they are requesting, and they are getting—through S. 1200—special Federal assistance in obtaining agricultural labor. That is what we are up to. Then they come conversely and deny the INS and the Federal Government the ability to monitor the special programs which we will give them under this legislaiton. That is the true irony of the situation.

Finally, the civil rights activists apparently are claiming that the INS enters open fields merely at the sight of brown-skinned people working in the field, and that then such a discriminatory practice can be remedied by a search warrant requirement.

It is a very interesting statement, and I believe Senator McCLURE has stated that every other businessman enjoys protection under the fourth amendment. That statement is only true if the employer conducts his business indoors because if the employer conducts his business out-of-doors, then he does not have the fourth amendment protection as would the owner of a construction firm, as would a person as we showed in the debate last year where two blocks from this Capitol they arrested a construction work force and half of them were illegal, undocumented persons—that is two blocks from the U.S. Capitol—as we failed to deal with immigration reform and those persons continue to be exploited.

So those working in outdoor, unsecured areas—from any industry or business—are not subject to the protection of the fourth amendment.

Remember again that only 8 to 15 percent of illegal, undocumented persons work in agriculture.

So I think it is inaccurate to believe that the INS is simply cruising open fields or roads near open fields. They do not. They act on tips from employees or on evidence the growers have established a pattern or practice of illegal alien employment.

A search warrant requirement will not stop such practices. It will just delay them, merely slow them up because, as the informers' tips are eventually verified, then the warrant is procured. It may take a little longer. And the further terrible irony, if you really are a civil libertarian, we find there are indeed employers who move those persons when they see that occurring, either voluntarily or involuntarily they move those persons. So that will not end it.

Although the amendment will require a warrant only for farms and other agricultural operations, it will be the first step, I think, for law enforcement officials to fear toward requiring of a search warrant for all open areas, and that is why the Justice Department and the Drug Enforcement Agency have opposed the amendment.

I also state to you that the International Association of Chiefs of Police and other law enforcement officers have again restated their opposition to the amendment. I am fully aware of the feeling about that. But I just thought we should share here what may take place; we may well injure some of the important things we have to do regarding drug abuse.

Mr. SYMMS. Mr. President, will the Senator yield?

Mr. SIMPSON. I will indeed yield to the Senator from Idaho.

Mr. SYMMS. Mr. President, I am pleased to support the amendment offered by my distinguished colleague from Idaho, Senator McCLURE. This amendment simply requires that agents of the INS obtain a search warrant before entering an open field.

For many years, farms have been an easy target for INS agents trying to meet a quota on illegals. Although less than 10 percent of the illegals in the country are employed in agriculture, over 50 percent of those taken into custody work on farms. The lack of a search warrant requirement has produced this unjustified and undesirable harassment of our Nation's farmers and farm employees.

The constitutionally guaranteed protection against unreasonable searches and seizures should not be applied selectively. All citizens have a right to that protection, and this amendment will preserve that right for the Nation's farmers and farmworkers.

Mr. President, there is not only a legal question at issue here but a human question as well. Anyone who has ever witnessed an INS raid can attest to the tremendous human tragedy involved.

When those agents enter a field, people fly in all directions like scared animals. Many flee because they face deportation and the loss of income to support their families. But many who flee are not illegal aliens; rather, they are U.S. citizens of Hispanic descent who simply panic at the sight of so many agents moving toward them. Moreover, many of those same U.S. citizens are frightened at the prospect of having to prove their citizenship.

For these reasons, I agree with my friend and colleague, Senator McCLURE, that the "open field" doctrine, under which these warrantless searches have been conducted, must be stopped. As the Senator noted in a recent letter:

> The open field doctrine is properly applicable, only to situations in which illegal activity or the "fruit of a crime" is clearly visible to law enforcement officials. The only thing that can be seen on farmland is people working in a field. To assume that they are doing so illegally because of the color of their skin and using this as justification for a warrantless entry onto private property, violates not only the farmer's rights but the farm worker's rights as well.

Mr. President, these warrantless searches are the only type of police-State activity of this nature allowed in the United States, and I commend Senator McCLURE for his efforts to correct this situation. I wholeheartedly support this amendment and urge its adoption by the Senate.

I thank the Senator from Wyoming.

Mr. WILSON. Mr. President, I rise in support of the amendment.

It strikes me that there is indeed an irony in this debate. Yesterday afternoon we consumed a considerable period of time engaged in lively debate on the subject of whether or not there is an adequate supply of domestic labor for the harvest of perishable commodities, and the critics of an amendment that would provide a seasonal worker program have protested that there is indeed and that such an amendment would threaten the livelihoods of Americans seeking to do stoop labor, apple pickers from Maine to Washington.

Now, is it not interesting that S. 1200, in affording this protection to the American farmer, targets them almost exclusively as a constituency for which the standard protections of the fourth amendment should be waived? And we are told that is justified on the basis of tips to the Immigration and Naturalization Service.

What this amounts to is a statement that those working in the fields can be presumed to be illegal aliens. That is the basis upon which it is deemed unnecessary to afford growers and those who work for them some special status that relieves us of any concern for their constitutional rights. We are to assume, notwithstanding the assurances yesterday afternoon that there is an abundant supply of domestic labor, meaning U.S. citizens, we are asked to assume that there is no need really to investigate, to justify what would otherwise be an illegal search and seizure, because we are, in effect, presuming that those working the fields are illegal aliens.

Mr. President, with friends like the U.S. Congress, farmers need few enemies. The kind of protections we are affording them through this legislation threaten to put them out of business. And without the saving amendment offered by the Senator from Idaho, what they face is continual harassment.

The proponent tells us that we are supposed to simply assume that by virtue of the fact that this activity takes place out of doors that the rou-

tine protections afforded other Americans under the fourth amendment are unnecessary. Well, Mr. President, I think we should reject that out of hand.

I think it is clear that a special case is made by S. 1200, one that is not justified by the facts, one that asks us to discriminate against farmers, against those with brown skin. Frankly, I do not think that the U.S. Senate should go on record in support of such a proposition. So I urge my colleagues, if they are concerned with fairness, to vote for fairness by voting for the McClure amendment.

I thank the Chair.

Mr. CRANSTON. Mr. President, I am a cosponsor of the amendment of the Senator from Idaho. I want to associate myself with his remarks. I think we need his amendment. It is a very important amendment to protect all sorts of rights in our society.

I also am delighted to associate myself with the remarks of my colleague from California, Senator WILSON, in regard to this amendment. I urge all of our colleagues to support the amendment.

Mr. DOMENICI. Mr. President, the amendment before us would require that officers of the Immigration and Naturalization Service obtain a search warrant prior to entering open fields to apprehend illegal aliens. It would ensure that farmers, ranchers, and farm and ranch workers are afforded the same protection against unreasonable and warrantless searches by INS agents as other businessmen and workers now enjoy. I rise in support of this amendment, which will remedy an injustice which results from the current law.

Under a Supreme Court case decided several years ago, agents of the INS are not required to secure search warrants before entering open fields. Currently, therefore, an INS agent must routinely obtain a search warrant before entering any place of business, except that place of business is a ranch or farm. The INS can raid the open fields of a farm or ranch without having probable cause to believe that the workers in those fields are illegal aliens.

This practice is arbitrary and discriminatory. It discriminates against ranches and farms and those people who work on ranches and farms. It severely disrupts farming operations, resulting in thousands of dollars in lost crops and man-hours annually.

The loophole that allows INS agents to enter farms and ranches without search warrants has led the INS to concentrate its enforcement efforts primarily on agriculture. While only 8 to 15 percent of the total number of illegal aliens in this country work on farms and ranches, nearly half of all INS apprehensions take place on farms and ranches. These figures reflect a distinct bias in INS enforcement activities against our ranch and farm industries.

A similar amendment was proposed to the immigration bill that was passed in 1983. I cosponsored that amendment, which was passed by a vote of 62 to 33. I am proud to cosponsor this amendment again. Let me add that this measure has been crafted so that it will not interfere with the ability of law enforcement agenices to enter fields where marijuana is being grown and seize those plants and arrest the growers. I encourage my fellow Senators to join me in voting in favor of this amendment to protect the rights of farmers, ranchers, and agricultural employees.

In closing let me thank the distinguished Senator from Idaho [Mr. MCCLURE] for his tireless efforts on behalf of this amendment. His commitment to remedying the injustice that results from the current law is to be applauded. I am proud to join him in sponsoring this measure.

Mr. MCCLURE. Mr. President, I will be very brief. As I said in my opening remarks, I think almost everyone is familiar with the issue. I think most Senators have already made up their minds how they will vote. Indeed, most Senators, the last time it was before this body, voted in favor of the amendment by a margin of 2 to 1, and I hope they will do so again.

But I do wish to respond just this much to the remarks the distinguished Senator from Wyoming made earlier. One is that somehow open fields are open game for law enforcement agencies regardless of what the subject matter may be. And I submit that is not what the law says and that is not what the Supreme Court said. In the Oliver case, they were dealing with the question of growing crops, plants growing in the field, marijuana plants in that particular instance. They were not talking about human beings' presence there and the search of the premises for people. They were talking about the search of the premises for growing plants. And there is a reason to make that distinction.

The reason I make it now is obviously to differentiate between law enforcement activities where they are trying to find growing plants and law enforcement activities when they are trying to determine the presence of illegal aliens.

But there is a similar tie to that. How do drug enforcement agencies find growing marijuana plants? They drive down the road or they fly over the field and they see something different and they immediately enter that field before it can be removed. Growing plants can be cut down and removed, and without a warrant they can do that. Typically, however, they probably discover evidence by a tip or otherwise and could get a search warrant and go there before the plants could be removed.

But we have carefully and narrowly focused this amendment so it does not deal with that question at all. It deals only with the enforcement of the provisions of this act. It does not extend to drug enforcement activities.

The second point that I think is valid in that connection is that indeed, as the Senator from Wyoming indicated, I probably would have said, or other people have said, that INS officials driving down the road see a work crew and stop and enter the field to determine their identity. Mr. President, they do that if the work force in the field does not have white skin. But if they have white skin, they just drive on. There is an invidious discrimination toward people who are not white skinned if they happen to be working in the field.

The Senator from Wyoming indicates, "Well, the same thing will happen. They just will get a warrant first and it will happen a few hours later."

Well, Mr. President, that is not necessarily true. Let me give you some information that has been given to me about some things that happened earlier this year in the State of Washington. And it did happen this year.

INS agents entered a farm in Othello, WA, four times in 1 month to search for what they suspected to be undocumented workers. Their last three trips into the field, without a search warrant, produced no undocumented workers. But, despite the fact it produced no undocumented workers, they did arrest two. And who did they arrest? Two Japanese citizens. Brown skinned, not white. They were arrested. What were they? They were agricultural exchange students from Japan who had a lawful right to be in the country. They entered the field to get to people who were not of white skin. They found some. They arrested them. They happened to be legally present, but they were not illegal aliens.

INS agents entered a field in Pasco, WA, for 29 straight days to search for undocumented workers.

On some occasions, the agents drove their trucks across the bean fields causing substantial damage to the bean crop.

Why should a farmer have to put up with that just because it happens that his workplace and his product is produced in a field rather than in a factory?

And remember that statistic a little earlier, that from 85 to 92 percent of the illegal aliens in this country are not employed in agriculture. They are employed elsewhere, where a search warrant is clearly required, and yet 50 percent of the arrests have been in agriculture because that is easier to do.

You do not have to get a search warrant. You do not have to have any more than a suspicion that somebody is there before you can then enter a field to harass the people who are there working.

Remember, this is not Government land that is being entered by Government agents. It is private land that is being entered without search warrants. If it were any other type of business or land in question, there could not be any entry on to the property. But because the INS believes that they have the right under the open field doctrine, they have the right to come on to the farmers' and ranchers' land as they please, it seems to me that we do have a need to act.

INS agents have used some of the most heavy-handed tactics in pursuit of what they believed to be undocumented workers. Neighbor farmers' fields have been entered by INS agents, again without a warrant, not where they were suspected to be but on the neighbor's land, in order to seal off the land of the farmer in question.

Entrances have been barred; fences and gates have been cut; workers, sometimes legal and sometimes illegal, have been handcuffed together and chained to trees. Why? Not because there is any presumption of guilt based upon anything other than the color of their skin and, upon occasion, because that worker does not speak English well.

I grew up in an area of Idaho where we depended upon seasonal farm labor as the labor demands during the year are uneven and worker demand at some periods of the year exceeds locally available labor.

Where did the workers come from? They came from Eagle Pass, TX. They were Hispanics, American citizens, most of whom did not speak English. Most of those who did speak English spoke with a heavy accent and spoke the English language poorly. Any INS agent would have perhaps been justified in asking whether or not they were illegal aliens. But just the color of their skin alone would make them suspect and, therefore, subject to the harassment that comes from a warrantless search. If INS has reasonable cause to believe, if they have a tip, that is sufficient; if they have information that leads them to believe, they can easily go to a magistrate, get a warrant, and enter those premises as they would if it were a packing shed or any other business enterprise.

As to the notion that has been suggested or only hinted at by the distinguished Senator from Wyoming that somehow you have to go get them now without a warrant because they will be moved before you can get to them if you do not, that simply defies reason. No farmer can simply move this crews around every hour on the hour or every half hour on the half hour, or any intermittent or short period of time without so disrupting the farming operation that it would be impossible for him to make any profit at all.

Mr. President, I sincerely believe that this amendment is both justified and necessary. I hope the Senate will once again vote in that manner when we vote on it.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficent second? There is a sufficient second.

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, I will only take a moment of the Senate's time. I support this amendment. It seems to me that if this bill becomes law, the enforcement strategy of INS ought to be focused on the enforcement mechanisms provided in this legislation—the employer sanctions and in the other enforcement provisions which have been added by this legislation. That is where the focus of INS ought to be. That is the whole point of this legislation, to have employer sanctions as the new and principal enforcement strategy.

We have seen under court opinions in the past that if there are going to be INS sweeps, if they do it in the front office they have to get a search warrant. If they do it in the barn they have to get a search warrant. All the amendment of the Senator from Idaho is saying is if they do it in the fields they also ought to get a search warrant. He has made the case.

INS raids are subject, quite frankly, to the greatest kind of abuse—the most discriminatory kind of incidents. I think those are individuals who ought to be able to have some degree of protection because in so many instances, as the record has demonstrated, so many individuals who are subject to the kinds of actions of the INS are American citizens. They have constitutional rights. They ought to be protected. There ought to be a basic presumption in their favor because the overwhelming majority of those who do work in the fields are American citizens.

I think the case has been well made. I think this amendment will be an addition to the bill. I hope the amendment will be accepted.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Mississippi [Mr. COCHRAN], the Senator from Maine [Mr. COHEN], the Senator from North Carolina [Mr. EAST], the Senator from Utah [Mr. GARN], the Senator from Nevada [Mr. LAXALT], the Senator from Vermont [Mr. STAFFORD], and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Kentucky [Mr. FORD], the Senator from Vermont [Mr. LEAHY], and the Senator from Arkansas [Mr. PRYOR] are necessarily absent.

The PRESIDING OFFICER (Mr. ABDNOR). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 51, nays 39, as follows:

[Rollcall Vote No. 180 Leg.]

YEAS—51

Andrews	Gramm	Moynihan
Armstrong	Harkin	Nickles
Baucus	Hart	Packwood
Bentsen	Hatch	Pell
Biden	Hatfield	Quayle
Bingaman	Hawkins	Riegle
Boren	Hecht	Roth
Bumpers	Heflin	Sarbanes
Burdick	Helms	Sasser
Chiles	Humphrey	Simon
Cranston	Johnston	Stennis
D'Amato	Kasten	Stevens
DeConcini	Kennedy	Symms
Dixon	Levin	Warner
Domenici	Matsunaga	Weicker
Exon	McClure	Wilson
Goldwater	Melcher	Zorinsky

NAYS—39

Abdnor	Gore	McConnell
Boschwitz	Gorton	Metzenbaum
Bradley	Grassley	Mitchell
Byrd	Heinz	Murkowski
Chafee	Hollings	Nunn
Danforth	Inouye	Pressler
Denton	Kassebaum	Proxmire
Dodd	Kerry	Rockefeller
Dole	Lautenberg	Rudman
Durenberger	Long	Simpson
Eagleton	Lugar	Specter
Evans	Mathias	Thurmond
Glenn	Mattingly	Trible

NOT VOTING—10

Cochran	Garn	Stafford
Cohen	Laxalt	Wallop
East	Leahy	
Ford	Pryor	

So the amendment (No. 607) was agreed to.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 608

Mr. CRANSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The bill clerk read as follows:

The Senator from California [Mr. CRANSTON] proposes an amendment numbered 608:

On page 89, line 15, before the period insert the following: "or, such documents provided under clause (i) may include a rent receipt, bank book, utility bill, or an affidavit from a credible witness (such as a parish priest)."

Mr. CRANSTON. Mr. President, I supported the reasonable approach to legalization offered by the distinguished senior Senator from Massachusetts [Mr. KENNEDY] this morning

which reflected the considered judgment of the conference committee on this bill.

I regret the outcome of the vote on that. My interest stems from the fact that 50 percent of the undocumented workers in this country are estimated to be in California.

How many? No one knows.

Two million? Six million? Whatever.

It is fair to say that the legalization program in this bill will benefit only a small number of them.

And then, only if they are willing to risk the gamble of coming forward.

But, having made the decision to legalize certain undocumented workers, why impose arbitrary, inflexible standards which prevent somebody who is qualified for permanent resident status from proving continuous residence, in the way that any other individual charged with a burden of proof, is entitled to prove a fact?

S. 1200 now expresses the preference for employment documentation as probably the most reliable kind of proof of continuous residence.

I do not disagree with that.

I just do not want to see that preference lead to the writing of a regulation that would exclude other forms of documentation and proof. I do not disagree with the statement that employment documentation is probably the most reliable.

All this innocuous little amendment will do is provide that in the event such proof is unavailable, a person seeking to be legalized may submit other reliable evidence of their continuous residence: rent receipts, bank books, paid utility bills, and, importantly, affidavits from credible witnesses such as the parish priest, among other possible documentation.

I cannot believe that my good friend from Wyoming [Mr. SIMPSON], who has labored so long and hard over this bill in an effort to be fair, would not accept this amendment.

I am awaiting the acceptance of the amendment.

Mr. SIMPSON. Mr. President, I apologize for not being more attentive. I try always to be attentive when my colleagues are proposing amendments, especially if I am opposed to them. But that may not be so here.

If I understand the purpose of the Senator's amendment, it is to expand the forms of documentation that are permitted to prove residence in the United States. This is rent receipts, bank books, utility bills, individual affidavits——

Mr. CRANSTON. From credible people like the parish priest.

I agree with the statement in the measure that the best and most reliable kind of proof is employment documentation. I do not quarrel with that. But other forms can be reliable.

Let me just add if I may that it may well be that proof of employment is not available to someone who has quite convincing other forms of proof. Part of my concern is that the statement in the measure stressing the importance of employment documentation might lead to regulations that would bar other forms of evidence. I think that would be very unfair and very unfortunate.

Mr. SIMPSON. Mr. President, I started off a bit facetiously and I do wish to correct that. It is a serious amendment, and I think it deserves a serious response.

Let me tell you the problems with it and why. We are already going to have cottage industry in rent receipts and W-2 forms when we get to legalization. There is not any question. Anyone who does not believe that is missing what will happen.

Legalization is a pretty priceless gift we are extending from an extraordinarily generous people. So we are going to have that.

As I see this amendment, it would encourage an absolute hailstorm of funny paper and phony paper and unverified documents, and it would not be that way, of course, with a credible person. When you are talking about staying in the United States of America or legal residence, then indeed that is something that makes people do a lot of things to stretch the law.

Let me just say that I think the incentive for fraud in proving eligibility for legalization is already extraordinary. May we have order, please?

The PRESIDING OFFICER. The Senator is right. There will be order in the Senate. We will not continue until there is order.

The Senator from Wyoming.

Mr. SIMPSON. Mr. President, with regard to Senator CRANSTON's amendment, the incentive for fraud in proving eligibility for legalization is already great. In fact, it is extraordinary.

I think this amendment increases this incentive manyfold because S. 1200 in its present form requires independent corroboration of documents showing evidence of a person's presence in the United States since a certain date and many employment related documents are preferred under S. 1200.

Employment documents then prove a person's existence in a certain place for a certain period of time. Rent receipts and utility receipts and bills merely prove that a certain fee was paid to someone for a certain service or item, and they are not nearly as reliable.

I think a personal affidavit is a means of corroborating evidence on a document but certainly no substitute for the document itself as this amendment would provide.

I think, as we all know and we see in our daily lives the use of receipts, those who wish to gimmick the use of receipts have an excellent opportunity every time they take a cab ride. The cabby will hand you the receipt with the date and his name and the blank left which is an interesting thing. I do not know what it does for the cabby. I know what it does for the rider. He uses it or fills in the term or the amount if he chooses to do so.

Allowing personal affidavits, however, would also create in my opinion an incredible potential for fraud, for individuals could go into the business of being credible witnesses. I can almost imagine a credible affidavit shop for the right fee. We have it in marriage fraud. I just hesitate. I know that does not have a thing to do with what my friend from California has in mind. I see it as something very much like Senator ALAN CRANSTON—compassionate approach to what could be a problem. But I also see it as something that could be terribly, terribly abused. The legalization program is already rather unpopular in the public eye. We had a little more evidence of that.

If it is not to appear thoroughly bankrupt, I think we have to assure that the program does not just die or drown in a blizzard of easy to counterfeit, difficult to verify paper.

I would resist that amendment indeed.

Mr. CRANSTON. I wish to respond briefly just to say it would seem to me that all that the Senator from Wyoming has said about various forms of evidence or nonevidence of residence in the United States would apply to documents indicating employment. An employer would have a particular incentive to cooperate in forging of documents were they desirous of doing so because they would have a motive. They have an employee perhaps they would like to keep in this country even though that person is not here legally.

Mr. SIMPSON. Mr. President, I would emphasize that there is nothing in the bill to prevent the Attorney General from approving rent receipts or utility bills as documentation, if employment documents are not available. That is if they are not available. The bill says that the Attorney General shall decide just what documentation will be acceptable so long as employment documents are used first if they are available. I would think that would handle what I certainly know and I believe is intended.

Under the circumstances, I would certainly reject the amendment. I would be glad to work with the Senator later on it. We can change perhaps some certain language. But at the present time, I just cannot see us going to a blizzard of documents by people who are in extremity, and they are in extremity because they are looking for this extraordinary act of legalization. We want to have appropriate employment documents. If they

are not available, the Attorney General is able to go to these others, but I hate to put that in the law that we actually name a rent receipt, a bank book, a utility bill or individual affidavits which could be nothing more than all sorts of various subjects of abuse.

I hope the Senator might consider withdrawing the amendment. But I do not know how he feels about that.

Mr. CRANSTON. Mr. President, I withheld asking for the yeas and nays hoping that we would be able to find this acceptable. But since we are unable to, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. CRANSTON. I would like to just add: I understand the concerns by the Senator from Wyoming. I know he has endeavored to be fair in all that he has sought to get into this bill. But what will be at issue on whether or not someone has been in this country for a time is a question of fact, and it seems to me that we should permit those seeking to establish their right to be in this country to present all the facts that would substantiate their case.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment. On this question the yeas and nays have been ordered.

Mr. SIMPSON. Mr. President, I move to lay on the table the amendment of the Senator from California.

The PRESIDING OFFICER. The question is on the motion to table.

Mr. CRANSTON. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Wyoming to lay on the table the amendment of the Senator from California.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. MOYNIHAN (after having voted in the affirmative). Mr. President, on this motion to table, I have voted yea. Were he able to be present, although he is necessarily absent, the Senator from Vermont [Mr. LEAHY] would have voted no. I respectfully ask that I might enter a live pair with him in that regard.

Mr. SIMPSON. I announce that the Senator from Mississippi [Mr. COCHRAN], the Senator from Maine [Mr. COHEN], the Senator from North Carolina [Mr. EAST], the Senator from Utah [Mr. GARN], the Senator from Nevada [Mr. LAXALT], the Senator from Vermont [Mr. STAFFORD], and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Missouri [Mr. EAGLETON], the Senator from Kentucky [Mr. FORD], the Senator from Vermont [Mr. LEAHY], and the Senator from Arkansas [Mr. PRYOR] are necessarily absent.

The PRESIDING OFFICER (Mr. GOLDWATER). Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 82, nays 6, as follows:

[Rollcall Vote No. 181 Leg.]

YEAS—82

Abdnor	Gorton	Mitchell
Andrews	Gramm	Murkowski
Armstrong	Grassley	Nickles
Baucus	Harkin	Nunn
Biden	Hart	Packwood
Bingaman	Hatch	Pell
Boren	Hatfield	Pressler
Boschwitz	Hawkins	Proxmire
Bradley	Hecht	Quayle
Bumpers	Heflin	Riegle
Burdick	Heinz	Rockefeller
Byrd	Helms	Roth
Chafee	Hollings	Rudman
Chiles	Humphrey	Sarbanes
D'Amato	Inouye	Sasser
Danforth	Johnston	Simpson
DeConcini	Kassebaum	Specter
Denton	Kasten	Stennis
Dixon	Kennedy	Stevens
Dodd	Kerry	Symms
Dole	Lautenberg	Thurmond
Domenici	Long	Trible
Durenberger	Lugar	Warner
Evans	Mathias	Weicker
Exon	Mattingly	Wilson
Glenn	McClure	Zorinsky
Goldwater	McConnell	
Gore	Metzenbaum	

NAYS—6

Bentsen	Levin	Melcher
Cranston	Matsunaga	Simon

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Moynihan, for.

NOT VOTING—11

Cochran	Ford	Pryor
Cohen	Garn	Stafford
Eagleton	Laxalt	Wallop
East	Leahy	

So the motion to lay on the table amendment No. 608 was agreed to.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. BYRD. I thank the Chair.

Mr. President, I wish to ask at this time as to what the program for the rest of the day may be, and with particular regard to rollcall votes and amendments, if the distinguished assistant Republican leader is in a position to respond.

Mr. SIMPSON. Mr. President, I say to the minority leader that I appreciate his patience. I very much appreciate his patience as we have dealt with this rather complex legislation.

There is a time agreement being distributed, or at least sought, which might provide that we would have perhaps one additional rollcall vote—we may even be able to avoid that—which would be a time agreement that all amendments which are presently pending at the desk will be processed, either this evening by those who wish to process them, and I hope you would, or certainly perhaps on Monday, which is a day of no votes. No votes will be held on Monday but it will certainly be a day when we will be in business.

With that, we would then proceed to have a rollcall vote on Tuesday on all amendments, together with anything that might be involved with Senator WILSON and Senator HATCH, whatever that may be. No amendments would be available after Monday. The amendments would be stacked until Tuesday at a time certain, beginning at approximately 10 o'clock, with final passage of the bill at a time certain after the conclusion or disposition of the stacked amendments.

That is a time agreement which is being sought. My fellow manager of the bill and I are ready to proceed. There might be, as I say, one more rollcall vote. There may not be. In any event, we are seeking that kind of accommodation so that we would be available for a while more this evening, but those not involved in the amendments could be released, or leave the Chamber, the community, or whatever.

We would be here to process amendments on Monday but that would be it. There would be no amendments to the amendments and the debate would go on. That is being sought.

Mr. BYRD. I am willing to be helpful in any way I can be to work out the matter.

Mr. CRANSTON. In regard to the proposed agreement, I would like to find a way to accommodate a need I may have but may not have. Senator D'AMATO has an amendment on a formula for distribution of funds. If that carries, I will not have an amendment to offer. If it does not carry, I might have an amendment I would like to offer as an alternative. I would like to have that right reserved.

Mr. SIMPSON. I will certainly add that to the time agreement. The Senator says that is significant only as it relates to a pending amendment?

Mr. CRANSTON. That is right.

Mr. SIMPSON. Very well.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized, but I say to the Senator from Florida that the Senator from Nebraska would like to be yielded to.

Mr. HEINZ. I yield to the Senator from Florida.

Mr. CHILES. I am going to present an amendment that will be accepted, but I will wait.

Mr. HEINZ. Mr. President, may I have the attention of the managers of the bill?

I am at a point where I am prepared to offer the amendment that I earlier proposed to offer. I have not yet sent

it to the desk, and I want to ask the managers of the bill whether they are prepared for this amendment or would prefer that it be offered and considered at another time. I think we will be on the bill long enough for it to be taken up either later today or on Monday and voted on Tuesday.

Mr. BUMPERS. Does the Senator from Pennsylvania intend to offer his amendment today or Monday?

Mr. HEINZ. I want to get a sense from Senator SIMPSON as to whether he would want the amendment voted on today or on Tuesday. I want to accommodate him, because he has been on the floor for a long time and will be here longer. If he has another amendment that he thinks will be disposed of quickly, I will not offer this amendment now.

I say to the chairman of the committee, the Senator from Wyoming, that I believe this amendment will not draw any serious opposition. I have had lengthy discussions with Senators CHILES and DOMENICI, so that at least there will be the opportunity, should the Senate so desire, to preserve some aggregate accounting but still separate Social Security from the unified Federal budget.

Mr. SIMPSON. Mr. President, I inquire of the Senator from Pennsylvania: I understand that it has something to do with his committee work, that he feels he requires this type of indication from the Senate as to the sense of the Senate on this issue. Is that correct?

Mr. HEINZ. That is correct. The Finance Committee will be taking up, among other things, budget reconciliation on Tuesday next.

Mr. SIMPSON. Mr. President, that would mean that if we were to obtain a vote on this issue on Tuesday morning, that would be sufficient for the purpose of the Senator from Pennsylvania. Is that correct?

Mr. HEINZ. It would, if the amendment were taken up early on Tuesday.

Mr. SIMPSON. I think that is important as a matter of comity; 88 Senators voted on the last amendment, and from my knowledge at this outpost, I think the number will continue to decline swiftly. I think we are entitled to give our colleagues a vote on serious issues; 88 Senators voted on the last amendment, which is really quite admirable. But I am still fishing for the time agreement.

There are about four more amendments. Senator MOYNIHAN has an amendment which will be accepted. I do not have the complete list. Senator METZENBAUM has one on which I think we can reach an accommodation. I understand that he may press for a rollcall vote on another amendment. There is a Wilson amendment, a Simon amendment which may require a rollcall vote, a Levin amendment which may require a rollcall vote, an Exon amendment. That is it. I think rollcall votes will be required if we cannot reach an accommodation. Is that correct?

Mr. EXON. Mr. President, will the Senator yield?

Mr. HEINZ. Mr. President, does the Senator from Pennsylvania still have the floor?

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor.

Mr. HEINZ. Mr. President, I renew my request for some direction from the chairman of the committee. It would be the Senator's preference to offer the amendment right now, but I want to accommodate the chairman of the committee.

Mr. SIMPSON. What is the inquiry?

Mr. HEINZ. It is my preference to offer the amendment now, but I am willing not to offer it at this time but later or on Monday, depending on what suits the preference of the chairman of the committee.

Mr. SIMPSON. We have one more amendment that will require a rollcall vote this evening. As to the rest of them, I will accommodate the sponsors of the amendment to either do it this evening or Monday and stack the votes—and that is what I am seeking to do—for Tuesday morning beginning at 10 o'clock, with no further amendments to be in order, and to have ad seriatim votes, with a certain time limit if that is appropriate. We have done that before with this legislation. There would be final passage thereafter. It would include the various amendments now pending which we will not dispose of this evening, including the amendment by Senator HEINZ.

Mr HEINZ. That is, if I offer my amendment tonight, we will get a vote on it tonight. Is that the intention of the Senator?

Mr. SIMPSON. I hope we might be flexible enough to allow the rollcall vote to occur Tuesday morning.

Mr HEINZ. I am flexible. We have to get unanimous consent to do that.

Mr. SIMPSON. We are looking for a unanimous-consent agreement to take the amendment of the Senator from Pennsylvania and other amendments and have a rollcall vote on Tuesday morning on those amendments. I hope his amendment would belong in that category.

I ask Senator METZENBAUM whether he would be averse to having the debate on his amendment, and if he requires a rollcall vote, would he have that on Tuesday morning?

Mr. METZENBAUM. I have no objection, but I hope the Senator will accept my amendment.

Mr. SIMPSON. The Senator is working toward that.

Mr. BUMPERS. Mr. President, will the Senator yield?

Mr. HEINZ. I yield.

Mr. BUMPERS. With respect to the amendment of the Senator from Pennsylvania, so far as the unanimous-consent request which may be propounded along the lines suggested by the chairman is concerned, I want to reserve the right to offer either a perfecting amendment or an amendment in the nature of a substitute to the Heinz amendment. I am not sure that I will offer one, but nothing is at the desk; and I understood that the chairman said a moment ago that he wanted to vote on all the amendments that were at the desk and that no more amendments would be in order. Is the amendment of the Senator from Pennsylvania at the desk?

Mr. HEINZ. No, it is not.

Mr. BUMPERS. I would want to make a continuing objection so far as his amendment is concerned, to this extent: that I reserve the right to offer a perfecting amendment or an amendment in the nature of a substitute. Otherwise, I have no objection to the rest of the request.

Mr. DOMENICI. Mr. President, will the Senator yield?

Mr. HEINZ. I yield.

Mr. DOMENICI. As I understand it, the Senator's reservation is not really a reservation, because there is no unanimous-consent request pending. Is that correct?

Mr. BUMPERS. I was just making my views known.

Mr. HEINZ. Mr. President, in an effort to accommodate the Senator from Wyoming, I yield the floor.

AMENDMENT NO. 609

(Purpose: To require the Attorney General to conduct a study on the use of a telephone verification system for determining employment eligibility in the United States)

Mr. CHILES. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Florida [Mr. CHILES] proposes an amendment numbered 609.

Mr. CHILES. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 38, between lines 20 and 21, insert the following:

(g)(1) The Attorney General, in consultation with the Secretary of Labor and the Secretary of Health and Human Services, shall conduct a study for use by the Department of Justice in determining employment eligibility in the United States. Such study shall concentrate on those data bases that are currently available to the federal government which through the use of a telephone and computation capability could be used to verify instantly the employment eligibility status of job applicants.

(2) Such study shall be conducted in conjunction with any existing Federal program which is designed for the purpose of providing information on the resident or employment status of workers for employers. The study shall include an analysis of costs and benefits which shows the differences in costs and efficiency of having the Federal government or a contractor perform this service. Such comparisons should include reference to such technical capabilities as processing techniques and time, verification techniques and time, back up safeguards, and audit trail performance

(3) Such study shall also concentrate on methods of phone verification which demonstrate the best safety and service standards, the least burden for the employer, the best capability for effective enforcement, and procedures which are within the boundaries of the Privacy Act of 1974.

(4) Such study shall be conducted within 12 months of the date of enactment of this act.

(5) The Attorney General shall prepare and transmit to the Congress a report—

(A) not later than six months after the date of enactment of this act, describing the status of such study; and

(B) not later than twelve months after such date, setting forth the findings of such study.

Mr. WILSON. Mr. President, will the Senator yield for a question?

Mr. CHILES. I yield.

Mr. SIMPSON. Mr. President, I ask the Senator from California if he will yield for a moment.

The minority leader is present. If we cannot obtain a time agreement along the general lines I suggested, then it has to be the intent of the managers to pursue this legislation, and there would be additional rollcall votes. That is not in the form of some ghasty threat. It is the reality of the fact that we have other items coming before us—the Superfund and many other things. So if the unanimous-consent request cannot be fashioned along the conceptual lines I discussed, then I guess we will have to plow ahead—I do not know how else to say that—if we are going to proceed and get this measure completed.

Mr. EXON. Mr. President, will the Senator yield?

Mr. SIMPSON. I yield.

Mr. EXON. Mr. President, I have been trying to get the floor to respond to a legitimate request from the managers of the bill.

I hope we will have enough consideration for the Senators who want to leave town to let them leave. Therefore, I hope that before we go ahead with any other amendments, we might at least propound a unanimous-consent request.

As the Senator from Wyoming knows, this Senator has been waiting patiently almost all day to offer an amendment which will not take a lot of time, and I will agree to a time agreement. I would only insist on submitting appropriate remarks and put off the vote to Tuesday. I just want the opportunity to offer the amendment today and make appropriate remarks. I hope we can pursue that and help out the managers of the bill in trying to accommodate those who have to leave.

Maybe we could have one more vote or whatever it is and come back on Monday and have votes on Tuesday.

Mr. SIMPSON. Mr. President, I do appreciate that. That is what we are working toward. I hope to share with my colleagues the minute I have information on that. It should be forthcoming. I understand it is being prepared. Then I shall propound it and we can discuss it further.

Mr. WILSON. Mr. President, pursuant to that time agreement, will the Senator from Wyoming yield so I may have a brief colloquy with him.

He has just stated that there is in process right now a proposal for a time agreement. Does the time agreement include a vote this afternoon on one of the Wilson amendments that relates to seasonal workers? I have another that relates to reimbursement that we could easily deal with on Tuesday.

Mr. SIMPSON. Mr. President, the Senator indicated he has an amendment. Is it Hatch-Wilson revisited?

Mr. WILSON. It is a substantial modification of the kind we had discussed this afternoon.

Mr. SIMPSON. Mr. President, the matter that the Senator and I discussed was not substantial.

Mr. WILSON. The Senator is not abusing the process?

Mr. SIMPSON. No, I am not, but indeed, we have protected the Senator in every instance and this Senator has been responsible for that, so I have no qualm about that.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. CHILES. Mr. President, I wonder if some of this colloquy could take place with the staff. I have a little amendment that is going to be accepted. I have been here 15 or 20 minutes. I would like to get it out of the way and clear the deck a little bit more.

Mr. President, the amendment I offer would require the Attorney General to conduct a study of the use of a phone verification system for determining the employment eligibility of job applications.

Such a study would analyze using existing Federal data in computers that could be accessed by the telephone to instantly verify the employment status of potential workers.

Mr. President, this study does not necessitate a workers identification card.

This study of a phone verification system would only concentrate on existing Federal data banks—that is, only numbers already in Federal computers, such as Social Security, green cards, and tax identification numbers.

My chief purpose of wanting such a study is to allow the Justice Department to carefully analyze a manner in which job applicants' employment eligibility can be verified without placing that burden on the employer. As I see it, the employer would only have to call an 800 number to be connected with the Federal computer, record the necessary identification numbers, and await the transaction code. This process is almost identical to that of a credit card verification. It would only take seconds, but would, most importantly, place the burden of verifying the worker's status on the Federal Government's data in the computer.

Mr. President, I strongly support employer sanctions. However, I am concerned about their potential effectiveness. I believe we must find a system of verifying the worker's status that is secure and efficient.

I feel strongly that we need a system that does not require the employer to be judge and jury in determining the worker's status.

And, we need a system that will establish a updated record that can be easily monitored to enforce employer sanctions.

I believe that phone verification system is such a system. But, I know some Senators have problems with such use of computers. That is why my amendment only authorizes a study. Let us let the Justice Department carefully scrutinize the worth of such a system. With a responsible study, we can then take a careful look at whether a phone verification system should be a viable part of employer sanctions.

Mr. President, I urge the adoption of the amendment.

Mr. SIMPSON. Mr. President, the Senator from Florida has presented that amendment appropriately. I have had problems with the original cost of a universal telephone system. It could be quite enormous. The Department of Labor indicated $333 million a year for the first 5 years and $200 million thereafter. I think Senator CHILES has recognized this by only requesting a study.

I think the telephone call-in system may well be a very effective way of doing things. The select commission looked at it. I think it has an appropriate ring to it, I might say. To implement such a system without knowing whether it would work would be expensive. A study would clarify that.

I appreciate the Senator's thoughtful approach to it. I believe his amendment can be acceptable, and I do accept it on behalf of this manager of the bill. I believe Senator SIMON will indicate his agreement.

Mr. SIMON. Mr. President, yes, I can speak for Senator KENNEDY. Those of us who serve on the subcommittee

think this is an excellent amendment and we shall be happy to support it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 609) was agreed to.

Mr. MOYNIHAN. I move to reconsider the vote.

Mr. CHILES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 610

(Purpose: To require the Comptroller General of the United States to investigate ways to reduce counterfeiting of Social Security account number cards)

Mr. MOYNIHAN. Mr. President, I send an amendment on behalf of myself and Mr. D'AMATO to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. MOYNIHAN] for himself and Mr. D'AMATO, proposes an amendment numbered 610:

On page 38, between lines 20 and 21, insert the following:

(g)(1) The Comptroller General of the United States, upon consultation with the Commissioner of Immigration as well as private sector representatives (including representatives of the financial, banking, and manufacturing industries), shall inquire into technological alternatives for producing and issuing social security account number cards that are more resistant to counterfeiting than social security account number cards being issued on the date of enactment of this Act by the Social Security Administration, including the use of encoded magnetic, optical, or active electronic media such as magnetic stripes, holograms, and integrated circuit chips. Such inquiry should focus on technologies that will help ensure the authenticity of the card, rather than the identity of the bearer.

(2) The comptroller general of the United States shall explore additional actions that could be taken to reduce the potential for fraudulently obtaining and using social security account number cards.

(3) Not later than one year after the date of enactment of this Act, the Comptroller General of the United States shall prepare and transmit to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives and the Committee on the Judiciary and the Committee on Finance of the Senate a report setting forth his findings and recommendations under this subsection.

Mr. MOYNIHAN. Mr. President, in brief, in the 1983 Social Security Amendments, we required that a tamperproof, counterfeit-resistent Social Security card be produced by the Social Security Administration. They did, Mr. President, but I regret to say, and I think most Members that I have talked to agree, that what we have here is the same pasteboard card we have had for the past 50 years. An institutional bias exists in the Social Security Administration. It will not produce a Social Security card which an employer can immediately look at and have confidence in and say this is an authentic document.

The need for such a document is central to this legislation. We are imposing severe sanctions on the use of false documents for purposes of employment. The current Social Security card, easily counterfeitable, is sold in volumes on both sides of our borders. An official Government estimate is that some $15 billion a year in fraud could be involved.

Mr. President, there was a time when the Social Security card simply served the purpose of reserving an account of the individual worker in the Social Security Administration, but we are a long time past that. There was a long period during which the card actually said, "Not to be used for identification." But events have changed that, and in every area of our activities, we find the Social Security number is a convenient reference for individuals.

Persons who join the armed services today have their Social Security card as their official dog tag numbers. Students in college are given it for their bursar number. They are perfectly acceptable and perfectly confidential as long as numbers are not counterfeited and misused.

The technology of the last few years has allowed very rapid development of quite extraordinarily efficient and inexpensive devices for providing a card that can be automatically checked through telephone lines to the banks that issue credit cards. The devices are simple. They involve a magnetic tape, they involve algorithms, they involve holographs, they involve well-established technology. Your average credit card today with a holograph, with a magnetic tape, costs 8 cents apiece. This is not a large sum.

The individual worker, a young man or woman applying for a job can hand an employer a seriously responsible document, which is what a plastic or other form of card can be, with numbers and vast amounts of data that can be put on a magnetic tape on the back. Or with a holograph, if you want to make it more difficult to misrepresent.

It is the most elemental of matters and at any checkout counter in any supermarket in America, any airline counter, they simply take this card and run it through a small device and it is immediately confirmed as valid or invalid with respect to very rapidly updated information on whether the funds or the credit are still available to the card. The purpose of the proposal I have is to say, let us try to break out of past unavailing efforts and get the Social Security Administration to do this on its own. We would ask the Comptroller General, in consultation with the Immigration and Naturalization Commissioner and whomever he wishes to consult to inquire into the technological alternatives for producing and issuing Social Security account number cards that are generally resistant to counterfeit, and which by their nature can be used for a quick check as to their authenticity. This is clearly within the range of the capacity of the private sector—and should be for the Federal Government—in this most basic of insurance systems that relate directly to employment. In the overwhelming number of cases, the Social Security card will be the one bit of identification the young person of whatever age submits to an employer.

I would hope this could be adopted, and I hope that the Comptroller General will take it as a serious opportunity to put in place systems of verification—systems without which this legislation would work serious injustice on a great many young new workers and entering workers.

It is clearly within our technological ability. We only need to make the decision. We have made the decision as a society to use this number for a wide range of purposes, from military identification, as I say, to bursar number when you become a freshman at the State university. The opportunity is here and the need, I think, given the criminal penalties we are necessarily imposing in this law.

Mr. BENTSEN. Mr. President, will the Senator yield for a question?

Mr. MOYNIHAN. I am happy to yield to my friend from Texas.

Mr. BENTSEN. I compliment the Senator in what he is endeavoring to do here. I have supported this effort for a long time. I think it is a major step forward.

I can recall at a time when people reacted negatively to a national identification card; calling it an invasion of their civil rights.

I think that is one of the phoniest arguments I have heard.

Anytime I want to go down and cash a check they say, "Let's see your driver's license," and I have to reach in my pocket and show them my driver's license. I do not mind that at all, except for the photograph, and I must comply.

I recall visiting with the Social Security Administrator regarding implementing a noncounterfeitable Social Security card. He said: "There is no way you can do that. The cost would be horrendous."

Then I said, "Can you explain to me why almost every State has a driver's license; if they can do that, they can make a foolproof of Social Security card!"

I go down to a little country like Costa Rica, a wonderful little democracy. Anyone who comes there votes, has a card with a photograph identify-

ing that person; if Costa Rica is capable of doing it then so can we.

When someone says, "Show me that you are in this country legally, show me that you are a citizen of this country," I do not think it is any invasion of my privacy to pull out a Social Security card and prove it.

You know, if I am trying to support my credit with my driver's license to cash a check, then certainly when it comes to saying that "I want a job to say that I am a citizen of the United States or that I am legally in the United States," I do not understand why I should apologize for that or feel that it is any invasion of my privacy at all.

I congratulate the Senator in what he is trying to do and support him.

Mr. MOYNIHAN. I thank the Senator from Texas and reinforce the point that this is the job applicant's opportunity to prove who he is. Most any sizable employer will have a device that just electronically picks up the magnetic signal. If not the employer can go down to the nearest bank and do it or go the nearest shopping center and do it.

It does not involve any invasion of anyone's privacy. It is a document that allows you to establish your legitimacy in our social insurance system.

Mr. President, I have discussed this with our distinguished chairman and I have found him very responsive to it. I think we do accept the fact that is something to be given to the Comptroller General. The ramifications are wider than the Social Security Administration itself and besides, we have tried with the Social Security Administration and it does not work. We have a developed technology, as the Senator from Texas has said, that can work. My amendment asks that a simple study be conducted and that the Comptroller General have his report to us not later than 1 year from the day of enactment of the bill.

When the Social Security amendments were before us in 1983, we approved a provision to require the production of a new tamper-resistant Social Security card. The law, section 345 of Public Law 98-21, stated:

> The social security card shall be made of banknote paper, and (to the maximum extent practicable) shall be a card which cannot be counterfeited.

What a disappointment when late that year, the Social Security Administration began to issue the new card, and it became clear that the agency simply had not understood what Congress intended. The new card looks much like the old, a pasteboard card really much like the first ones produced by Social Security in 1936. It has the same design framing the name, nearly the same colors. It feels the same. An expert examining a card with a magnifying glass can certainly detect whether or not one of the new ones is genuine, but the average employer cannot distinguish a counterfeit card from the real article.

By so doing—or not so doing—the Social Security Administration did not succeed in protecting the integrity of the Social Security System, or American taxpayers from the massive amounts of fraud perpetrated with the help of counterfeit cards. Nor did they help the young Hispanic worker who needs a document that can quickly establish his legal status to an employer's satisfaction.

There is a history here. The Social Security Administration, from its early years, has resisted any use of the Social Security card for identification purposes. At one time, the card actually said it could not be so used.

In 1977, when I first proposed that we produce a new card, the Social Security Administration objected and the proposal was not adopted. I tried again and again, and succeeded only on the fifth try.

Or so I thought.

The use of counterfeit Social Security cards is costly. According to estimates by the Department of Health and Human Services and the Department of Transportation, crimes based on false identification, which frequently include counterfeit and fraudulently obtained Social Security cards, cost Americans more than $15 billion annually.

A new Social Security card—one very difficult to counterfeit and easily verified as genuine—could be manufactured at a very small cost. Today, the average high-technology-credit card with a magnetic stripe costs 8 cents to produce. A Social Security card could be designed along just these lines. The card could be highly tamper-resistant, and its authenticity could be readily discerned by the untrained eye. It must be seen as a special document; one which would be visually and tactilely more difficult to counterfeit than the current paper card.

The magnetic stripe would contain the encoded Social Security number, encoded with an algorithm known only to the Social Security Administration. A so-called watermark stripe could be placed over it, making it nearly impossible to counterfeit without technology that currently costs $10 million. The decoding algorithm could be integrated with the Social Security Administration computers.

Any employer could verify that the card was genuine with the simple hardware now used for credit cards at just about every airline and grocery checkout counter, magnetic card readers. The information is transmitted from the card to the reader, to verify if the card contains a valid coded number to be interpreted by the algorithm, and then, if necessary, the validity of that Social Security number could be verified by phone link with a central Social Security file.

Let me repeat. According to Malco, the largest manufacturer of credit cards with magnetic stripes, these cards cost 8 cents a piece, when purchased in quantities of 1 million or more. For a bit more, each card could include a hologram, which is also very difficult for counterfeiters to reproduce.

The new cards will not eliminate all fraudulent use of Social Security cards. But it will close down the shopfront operations in many border towns that flood America with false Social Security cards. And once implemented, a young worker could bring an employer a document which could be authenticated on the spot, and declare without trepidation, I am legal: I am eligible to work for you in the United States.

That is what the Congress intended in the 1983 legislation. Not a card to be authenticated solely by Immigration and Naturalization Service technicians, but a card to be sized-up by employers with relative ease and certainty.

Let's try again. Let's at least approve a study by the General accounting Office, in consultation with the Immigration and Naturalization Service and experts from business, of the technological alternatives now available to produce a more tamper-resistant Social Security card.

The study will tell us how we can produce a card that will help protect the integrity of the Social Security System, help the Naturalization and Immigration Service in its efforts to identify those living here illegally, and help the young Hispanic worker in his and her efforts to earn the living, and the dignity, to which every hardworking legal resident of this country is entitled.

Mr. SIMPSON. Mr. President, I do appreciate the continuing work of the Senator from New York. He and I have worked together on what to do about the integrity of the Social Security card, how to improve it and how to make it work without intrusion. As I understand the amendment, it would require technological alternatives for improving the security of the present Social Security card.

I think that is a very important question with regard to the immigration bill, particularly because so many current forms of identification are so thoroughly gimmicked. S. 1200 protects us against the specter of a national ID card. I know Senator MOYNIHAN has never felt that would be appropriate. I think that we do need to provide for the security of present documents.

This amendment is thoughtful and would allow us to study possible methods to achieve it. I am very pleased to

accept the amendment. I believe it is acceptable to the minority.

Mr. MOYNIHAN. I thank the distinguished chairman.

Mr. BENTSEN. Mr President, I would like to comment for about 5 minutes on the bill itself.

Mr. MOYNIHAN. Will the distinguished Senator from Texas allow me to have this amendment disposed of?

Mr. BENTSEN. Of course I would. I thought it had been accepted.

Mr. MOYNIHAN. Mr. President, I believe the Senator from Illinois wishes to indicate his acceptance.

Mr. SIMON. Thank you, Mr. President. I shall be brief.

Mr. President, on behalf of the minority on the subject we think it is an excellent amendment and are pleased to support it.

Mr. MOYNIHAN. Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. Without objection, the amendment (No. 610) is agreed to.

Mr. MOYNIHAN. Mr. President, the Chair is being insistently agreeable, and in no way would we have it otherwise. I move to reconsider the vote by which the amendment was agreed to.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEVIN. Will the Senator from Texas yield?

Mr. BENTSEN. I am delighted to yield.

Mr. LEVIN. I thank my friends.

Mr. President, I wish to engage in a brief colloquy with the chairman of the Subcommittee on Immigration relative to the need for more INS inspectors at Michigan ports on the northern border.

S. 1200 includes appropriations for increased border patrol and other inspection and enforcement activities of the INS. While I am all too familiar with the serious demands and needs of the southern border, I am concerned about the shortage of inspection personnel at the northern border as well. The Port of Detroit is the largest port of entry along the northern border. Complaints to my office are constant from both the traveling public and the business community about the long lines and intolerable wait at the Detroit-Windsor Tunnel, the Ambassador Bridge, and the Blue Water Bridge between Port Huron and Sarnia. One constituent wrote to me on April 26, 1985, that she and her family were "held captive for 2½ hours" on the Ambassador Bridge. According to my constituent, during this period, "* * * cars were boiling over, clutches were smelling, and cars were being towed off * * *." The lines are so long and intolerable that fist fights have broken out in the tunnel. People have become ill while waiting and have not been able to move their cars out of the tunnel for help.

Mr. President, business in the Michigan area is being discouraged and even lost due to the cost of these lengthy waits and inconvenience at the Detroit-Canada border. Michigan's economy cannot tolerate a hardship that can so easily be avoided. I need not tell the chairman that our trade with Canada is vast and vital. It is in the interest of both our nations to restore our mutual border to the effective industrial and international link it once was. A letter I received from St. Clair County, Michigan stated:

> At its meeting of August 28, 1985, the St. Clair County Board of Commissioners entered into considerable discussion on a problem that effects both the United States and Canada. The problem is the increasing amount of time that it takes to clear Customs and/or Immigration at various points of entry and specifically at the Blue Water Bridge between Port Huron and Sarnia. As you would appreciate, any delay has an impact upon the social and economic life of both countries, but as of late, the delay is becoming more and more apparent.

The problem can easily be identified. The volume of car and truck traffic at entry points in Michigan has increased dramatically. For instance, traffic volume at the Ambassador Bridge in Detroit has increased by more than one-half million in the past decade. The increase at the Detroit/Windsor Tunnel has been greater than 300,000 for that same period. Unfortunately, full-time inspection positions have been reduced by more than 33 percent during the past 10 years.

I realize that resources are limited and that a principal goal in authorizing increased funding for inspection and enforcement activities by the INS is the problem of illegal immigration at the southern border. I hope that the northern border will not be ignored because our needs are so great.

Can the chairman give me some assurance that the ports of entry on the northern border and specifically, the Port of Detroit and the Port of Port Huron, will receive some increase in the number of inspection personnel under this legislation?

Mr. SIMPSON. The Senator from Michigan is correct in assuming that most of the additional funds authorized to be appropriated under S. 1200 for inspection personnel will be directed to the southern border, where our shortages are the greatest. However, we recognize that increases in the number of people entering ports on the northern border might well create a need for more inspectors. I will ask the INS to look at the need for more inspectors at the Port of Detroit and the Port of Port Huron and to do everything possible to meet those needs.

Mr. LEVIN. Mr. President, on another point, I wish to briefly bring to the attention of the floor manager, a case which was decided less than 3 weeks ago by a Federal district court in California. It was the case of the International Union of Bricklayers and Allied Craftsmen versus Meese. In this case, the court decided that a B-1 visa is not available to indivduals who temporarily enter this country to install, service, or repair commercial or industrial equipment or machinery purchased from a company outside of the United States. The court found that INS operations instruction 214.2(b)(5) which allowed a B-1 visa to be issued under this circumstance violated sections 101(a)(15)(B) and 101(a)(15)(H)(ii) of the Immigration and Nationality Act.

This INS regulation was promulgated in 1972. I would ask the floor manager if he can give me some assurance that the subcommittee will look into this issue, not to second guess the court, but to see whether this INS regulation which had been in effect for 13 years met a legitimate need which will now go unmet. Further can I have some assurance that in looking at this issue the subcommittee will consider the net impact of this INS regulation on jobs in this country held by Americans.

Mr. SIMPSON. I can understand the Senator's concern, and I assure him that the subcommittee will look into this issue with an eye to seeing whether a modification of the statute itself might be in order, taking into account the relevant employment concerns.

Mr. BENTSEN. Mr. President, this is not the first time we have discussed an immigration bill. I can think back to the time when TED KENNEDY, the Senator from Massachusetts, and the Senator from Mississippi, Jim Eastland, worked on an immigration bill.

I guess this is the third time I will have voted for Senator SIMPSON's bill.

I could give you probably 20 reasons not to vote for it, but none of them are good enough. I certainly do not like the idea of employer sanctions. I wish we could have come up with a better solution to it than that.

I hear some of my friends say add more border partrolmen. The people who say that, I believe have not traveled the border to the extent I have. There is no way you can put enough border patrolmen on the U.S. borders to stop people from coming into the United States.

I can take you and fly you over ranches in south Texas and I can show you paths across those ranches coming from the border and those are not paths made by cattle; those are paths made by people, moving across this country and moving into the interior of our country.

We have more illegal immigrants into this country than any other nation in the world. The estimate is 5.6 million. I do not know how that number is calculated. The very nature

of the problem makes it very difficult to define but we know it is millions and millions of people and we know we have lost control of our borders.

One of the primary requirements of a country is to have integrity of its borders and we have lost that.

We have the most generous quotas on immigration of any nation in the world and it is time that we stay within those quotas.

This is the third time that Senator SIMPSON's bill has been before us. I know that there are a variety of interests opposing this bill, each of them with what they consider a legitimate concern.

But what we have to look at is the whole picture, the overall benefit immigration control provides to our Nation. One-fourth of this world goes to bed hungry every night. Another fourth suffers from malnutrition. And half of them would move here tomorrow if they could, and I wish we could handle them. We are a compassionate people and we are a concerned people. I know what is written on the Statue of Liberty, but I also know when that was written. It was at a time when the West was not settled, and we desperately needed immigrants. But that time has passed. The West is settled. We have 8.1 million people in our country who are out of work, people who are looking for jobs.

America has changed. I think it is time that we respond to those who cry out for jobs, those who want a fair shake, those who want a chance to build a home for their families. We look at a trade deficit today that is probably going to be $150 to $160 billion. Last year it was $123 billion, the year before that approximately $70 billion.

That means that we are going to have increasing loss of jobs in this country as we make transitions to other types of occupations. This is no time for a great influx of immigrants to come to this country.

I hope that at this time we will once more pass this bill by an overwhelming majority and that that message will go forth to the House of Representatives and that you will see the same kind of reaction there, and once again we will restore the integrity of the borders of this country.

I congratulate my good friends, Senator SIMPSON and Senator KENNEDY, for the monumental work that they have done on this piece on legislation. I hope that the Members and my colleagues will support it and support it in great numbers.

AMENDMENT NO. 611

(Purpose: To express the sense of the Senate regarding ethanol imports)

Mr. EXON. Mr. President, I send an amendment to the desk in behalf of myself, Mr, SIMON, Mr. BUMPERS, and Mr. HARKIN, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Nebraska [Mr. EXON], for himself, Mr. SIMON, Mr. BUMPERS, and Mr. HARKIN proposes an amendment numbered 611.

At the appropriate place in the bill, insert the following:

SEC. . (a) The Congress finds and declares that—

(1) The Treasury Department's decision on August 28, 1985 to postpone until November 1, 1985 implementation of a 60-cent-per-gallon tariff on imported Brazilian ethanol would cause significant harm to U.S. agricultural and commercial ethanol industries, a loss of jobs in the ethanol and related industries, further deteriorate the U.S. balance of trade, pressure downward commodity prices even further and heighten the long-term threat of more U.S. dependence on imported oil;

(2) This decision clearly is counter to the explicit dictates of the Congress in the passage of Public Law 96-499 adopted by the Congress in 1980 and signed into law by the President;

(3) The potential amount of ethanol which could be imported under reduced tariffs before November 1, 1985 could equal the total amount of annual domestic ethanol production in the United States;

(b) It is therefore the sense of the Senate that—

(1) The 60-cent per gallon tariff on imported ethanol should be immediately implemented.

Mr. BYRD. Mr. President, will the distinguished Senator yield?

Mr. EXON. Yes, without interrupting this part of the proceedings.

Mr. BYRD. Mr. President, I merely want to ask our good friend, the manager of the bill, Mr. SIMPSON, whether or not we could give our Senators word that there will be no more rollcall votes today. I do not have to leave. Some of our Members on both sides of the aisle have flights out of Washington and, as I understand it, if they do not get away within the next few minutes to make those flights, they will have to stay overnight and will not be able to leave today.

The distinguished Senator knows that I support his bill. I am not one of those who has to leave in this instance.

If we could have that agreement that there will be no more rollcall votes today, we could continue to work on an agreement looking toward Tuesday for final passage. I cannot assure that we will have an agreement, but I cannot assure we can have an agreement if we continue to have rollcalls.

Mr. SIMPSON. Mr. President, I am fully aware, not only in my capacity as manager of the bill, but as a Member of the leadership on this side, that it is hazardous business to become known as an unaccommodating chap. I really am not. I really would love to tell my colleagues right now to head for National Airport and Dulles. I cannot.

But that is not me delaying them. I am ready to stay here and process this bill and process the amendments to this bill, either tonight until 9 o'clock or whatever you have in mind, or all day Monday.

But I know one thing about legislating in this place after 6½ years. Once I make that decision, this Chamber will clear and we will be back in stringing this bill out on Tuesday and Wednesday and Thursday, and that is the way it will be. I am not going to be a part of that. I hate to be hardnosed, as they say in the game, but we are just going to keep processing. If people wish to filibuster or intrude or interfere, I guess we will just keep going, because I do not know any other way. And I will probably be looking forward to the expertise of the minority leader if he has any thoughts to help in the expedition of that process.

What I want to do is this: So there will be no mystery, no mystery at all, let me just share it with you once more. It would be a unanimous-consent agreement to process every amendment that is before us and allow people to leave these Chambers tonight. As soon as this unanimous consent is agreed to, Members may absent themselves and we will then deal—either this evening, or at the accommodation of the amendment proposers—with several amendments and I have them listed here. There is a Metzenbaum amendment, two Simon amendments, a Levin amendment, a Wilson amendment, which is a revisitation of the amendment of yesterday with a "substantial change"; another Wilson amendment; a D'Amato amendment which will be agreed to, perhaps; a Cranston amendment with a distribution formula; a Heinz amendment dealing with Social Security, an Exon amendment dealing with Brazilian ethanol imports; a Bumpers amendment, either perfecting or a substitute to the Heinz amendment; and a Simpson amendment which could be called the all-gunner amendment of some kind.

I then would have asked unanimous consent that any rollcall votes ordered past the hour of 6 this evening or on Monday, September 16 all day, or in relation to any amendments on S. 1200 be postponed to occur in the morning of Tuesday, September 17.

Originally that was proposed for 10 a.m. Senator KENNEDY and I have a refugee consultation at 10 a.m. on Tuesday. Since there is not a time agreement yet, I would propose that that would be at 12 noon, then, on Tuesday, the 17th, in the order in which the yeas and nays were ordered.

I would also have asked unanimous consent that there be 5 minutes of debate prior to each sequenced vote on Tuesday, to be equally divided, and that there would be no motion to recommit and that final passage would occur on S. 1200 without intervening

action, other than third reading, immediately following the last sequenced rollcall vote on Tuesday, September 17, and that paragraph 4 of rule XII be waived.

I present that. If that is not acceptable, we will plow ahead with all of the hazards that go with that.

Mr. BYRD. Mr. President, reserving the right to object, the agreement has not been cleared on either side, to my knowledge. I have not seen it yet.

Mr. EXON. Mr. President, does the Senator from Nebraska still have the floor? I am happy to yield to the managers of the bill for anything that they want to do.

Mr. SIMPSON. Mr. President, then, at this point, I would suggest the absence of a quorum.

Mr. BYRD. Mr. President, the Senator from Nebraska has the floor.

Mr. EXON. I did not yield for that purpose.

Mr. SIMPSON. Mr. President, let me review, since we are talking again here about order. I submit to the Senator from Nebraska that his amendment that he is speaking on now was presented last evening. Then I put him on the list. The list is one that has other people to appear before the Senator from Nebraska: Senator METZENBAUM with an amendment, Senator WILSON with an amendment, Senator SIMON with an amendment, Senator LEVIN with an amendment, Senator METZENBAUM, Senator D'AMATO, and then Senator EXON.

I am only saying that if now we are to proceed with the amendment of Senator EXON—and apparently we are; he presented it—I simply submit that I would be very pleased to accommodate the Senator if I could, but an amendment on the issue of Brazilian ethanol imports is not something I am familiar with in connection with immigration reform. I have read it. The Senator presented it to me. He was very good to present it to me this morning. It is not now out of order procedurally for him to do as he has done. It is perfectly appropriate. But it is certainly not part of the proposal, as people have been waiting in line very patiently on both sides of the aisle to deal with their particular issues.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska has the floor.

Mr. EXON. Mr. President, I hope that the remarks that we are making on this subject and the preceding discussion will not fall within the printing of the RECORD so as to interrupt the introduction of the amendment that I have accomplished a few moments ago.

I was a little bit surprised at the remarks being made by the manager of the bill. I think the manager of the bill should know that, with the possible exception of the Senator from Wyoming, the distinguished Senator from Massachusetts, and the distinguished Senator from Illinois, I believe this Senator has been on the floor more today than any other Member of this body. I suggest that I have been patiently waiting.

I was somewhat disturbed, frankly, when the manager of the bill did not object to the Senator from Pennsylvania standing up and offering an amendment that was out of order. The reason that I stood up, Mr. President, a few moments ago was that, after the Senator from Texas finished his discussion, there was no one on the floor that I could see, no one in their seats, no one standing, and we were wasting time once again. So I thought: What is wrong with the Senator from Nebraska proceeding with the introduction of his amendment?

I have the floor. I am going to do that, despite what might be the objections, legitimate or otherwise, of the Senator from Wyoming.

Mr. President, in 1980 the Congress, in an effort to promote a U.S. ethanol industry and in the interest of long-term energy security, set the import duty on fuel alcohol at roughly 60 cents per gallon. It was a responsible course of action to take. This measure was intended to lead us toward energy self-sufficiency and would provide new markets for our agricultural commodities.

However, in 1984, American importers soon began to capitalize on a loophole of their invention which would allow imported ethanol to be mixed with a small amount of toluene to avoid the U.S. tariff. The phony and devious theory was that a small amount of the chemical toluene added to ethanol made ethanol something other than ethanol, even though the new brew was employed for identical purposes.

On August 2 of this year our Customs Service belatedly closed this loophole and it appeared that this flood of foreign ethanol would be held back at last.

However, the Treasury Department began to intervene on the part of importers. As a compromise, the Customs Service and the Treasury Department agreed to a 90-day grace period before implementing the congressionally mandated tariff for this incoming ethanol until November 1.

Mr. President, a compromise and a sell-out of great proportions occurred. The Treasury Department compromised our integrity. The Treasury Department circumvented the will of Congress. The Treasury Department decided it knew what was best, regardless of the plans this body set out for our own energy independence and the marketing of our own agricultural products.

Exactly 2 years ago, I assisted with the groundbreaking ceremony of Nebraska's first major ethanol production facility in Hastings, NE. At that time all felt an enormous sense of accomplishment. Through the course of my Governorship in Nebraska, and with the help of the Congress, we had overcome obstacle after obstacle in our effort to provide a measure of energy self-sufficiency for America and new markets for American agricultural products.

Today, in light of recent developments, our ambition for developing ethanol is holding steady, but my optimism is challenged.

Ethanol production in the United States is being challenged on several fronts. What continues to amaze me is that challenges to domestic, commercial production of ethanol come not from technical problems or environmental concerns, but from our very own Government.

Recently I communicated my frustration on this matter to the President's Trade Representative, Mr. Clayton Yeutter. In my telegram to Mr. Yeutter I said:

> • • • It is evident that the Reagan administration cares more about the financial health of American international bankers and their insolvent foreign loans than the imminent bankruptcy of thousands of farmers, ranchers, and middlewestern small businessmen • • •.

I asked the Trade Representative to intervene in this matter and help implement the higher tariff immediately.

This tariff delay has severely harmed American ethanol producers. And it has, without a doubt, added insult to injury to America's farmers who face economic problems greater than any they have faced since the Great Depression.

Not only will this horde of Brazilian ethanol at minimal tariff cripple domestic ethanol production—this imported ethanol is actually fueling the steamroller of economic depression which is already crushing farms and small towns on its way to our larger metropolitan areas. These cheap, subsidized imports during this 90 day period could equal 1 whole year's worth of U.S. ethanol production.

With a wink and a nudge, the Treasury Department will allow up to 600 million gallons of ethanol to come into the U.S. almost duty free. This is the equivalent of 240 million bushels of corn and could depress corn prices by 15 cents per bushel.

Not only does this action devastate our domestic ethanol industry, but it will play a major role in our 1985 farm program. It could mean that the Commodity Credit Corporation would incur an additional obligation of perhaps hundreds of millions of dollars in corn loans, not to mention the 30 cents per bushel per year for storage and 25 cents per bushel per year for interest. Furthermore, deficiency payments will increase.

Our great Nation also loses in another, more direct way. Up to $350 milion in import duties will be lost.

The delay in reinstating the tariff is purely, unmistakably, and blatantly a windfall for a limited number of ethanol importers. It should be obvious that this windfall is not going to those who are interested in ethanol as a source of renewable fuels, nor is it going to people who are concerned about utilizing our farm products.

Mr. President, just the other day Vice President Bush declared that the President will get tough with our trading partners. He said, "No more Mr. Nice Guy". Well, here is a place where we can start.

It appears that the centerpiece of the President's forthcoming new trade policy will be aggressive enforcement of existing trade laws. That is exactly what I am asking for in this sense of the Senate resolution. The resolution does not recommend a new trade law. It simply says that the existing 60-cent-per-gallon tariff on imported ethanol should be immediately implemented.

I regret that this resolution has to be placed on this bill. However, we are already halfway through the 90-day grace period allowed by the Treasury Department ruling and that ruling must be reversed now.

It is tough enough to fashion sensible agricultural and energy policies for America without having to fight our Government. We must take a stand today for America's farmer and for energy sufficiency.

Mr. President, I urge adoption of the amendment.

Mr. President, I will be very happy to set over the vote on this until next Tuesday. I am about to ask for a rollcall vote. I want to fully cooperate with the manager of this bill, as I have, to get our colleagues released, those who wish to be released. That is why I have been patient all day long. That is why I took exception to the indication that when the Senator from Nebraska got up under the rightful Rules of the Senate, when no one else sought recognition, the indication was that I should have waited for somebody who was not here to present their amendment. I did not choose to do that.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. EXON. Mr. President, one of the cosponsors desires recognition but I do not have the right to yield to him unless it is for a question.

The PRESIDING OFFICER. Will the Senator yield to the Senator from Illinois?

Mr. EXON. I yield to the Senator from Illinois.

Mr. SIMON. Is it not true as you were going about Nebraska and I was going about Illinois and my colleague, Senator DIXON was going about Illinois, that we found farmers in desperate straits and the last thing we need is the lowering of corn prices by ethanol from Brazil? Is that not correct?

Mr. EXON. The Senator from Illinois is so accurately correct.

Mr. SIMON. I thank the Senator from Nebraska. I commend him for his amendment.

Mr. EXON. Mr. President, I yield the floor.

Mr. ABDNOR. Mr. President, I share the frustration expressed by my distinguished colleague from Nebraska, Mr. EXON, about the current Federal policy as it applied to imported ethanol. This is another glaring example of how our current trade policies work against the American farmer.

I regret that the U.S. Treasury Department seems to be more concerned about the well-being of Brazilian agricultural interests than they are about the American farmer and rural America.

I commend Senator EXON for his continued efforts to assist with this issue and I urge my colleagues to join in this effort to place the Treasury Department on notice that we will not allow these types of stupid policies to continue. They are disastrous for America and for the American farmer.

Mr. SIMPSON. Mr. President, I want to express to the Senator from Nebraska an apology. He has been patient. Indeed, there was no activity on the floor when he determined to take that opportunity to present an amendment which he had been waiting to present for a day—a full day. I do extend that apology to him and thank him for his understanding.

Mr. EXON. If the Senator will yield, I thank him. An apology is not in order. I know the extreme patience that the Senator from Wyoming has. I appreciate his consideration. I just wanted to state my remarks for the record.

Mr. SIMPSON. I thank the Senator from Nebraska.

Let me just state that with regard specifically to the amendment, the finding here is not binding, although it might be considered, I understand, very significant in the litigation. The issue appears to be a very significant one. I think it deserves full consideration through the normal committee proceedings, a hearing and debate by those most deeply involved in it, those on the Agriculture Committee. I appreciate the offer of the Senator from Nebraska to consider that if we are able to stack votes and come to a Tuesday vote. I assure the Senator we will have a vote on the amendment. I will advise the Senator from Nebraska I will move to table the amendment, not to have an up-or-down vote but to table if we are able to take it to the Tuesday stacked votes. That may break down.

Mr. EXON. I would like a little bit of clarification. I had previously talked with the Senator from Wyoming. I discussed this with the Senator from Kansas, the majority leader, who supports it, because what we are doing in this sense-of-the-Senate resolution that I have sent to the desk is essentially the same request that the majority leader, Senator DOLE, and the chairman of the Foreign Relations Committee, Senator LUGAR, made to the Secretary of the Treasury within the last few days.

I am quite surprised that the Senator would move to table. I assumed there was general agreement on this.

I am certainly not objecting to the Senator's right to move to table, if that is what he wants to do.

We agree, do we not, that the vote will be held on Tuesday? I would rather vote this afternoon, if possible, but I suspect the Senator would rather do it on Tuesday to accommodate other Members, which the Senator and I have been trying to do all day.

Mr. SIMPSON. Will this issue still be topical in several weeks?

Mr. EXON. I would respond to that, with all due respect, it would not be. November 1 is the key date. As I said in my remarks, and perhaps the Senator from Wyoming was momentarily distracted, we are halfway through the grace period authorized by the Treasury Department, and each and every day that goes by without a clear and overwhelming expression from the Senate that something should be done is what makes it timely. We do not have the time to refer it to committee.

Mr. SIMPSON. Mr. President, under those circumstances, and if we are able to pass this bill and go to conference, this would not be a topical issue. Under those circumstances, since it is an expression the Senator wants to make and a clear one, I am willing to accept the sense-of-the-Senate resolution with regard to this particular matter. However, I must clear that with the minority.

Mr. EXON. It has already been cleared on this side.

Mr. SIMPSON. Then it is so accepted.

Mr. EXON. We seem to be in agreement. The yeas and nays have been ordered. Will we stack the yea and nay votes until Tuesday next?

Mr. DOLE. The Senator will take it without a rollcall vote. Is that right?

Mr. EXON. I requested and would like a rollcall vote. In order to accommodate as many Members as possible, I think it would better to put that off until Tuesday. But I am prepared to vote, if that is the will of the leader.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Nebraska. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

Mr. SIMPSON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMPSON. Mr. President, I indicate to the Senator from Nebraska that a rollcall vote is certainly his prerogative, and I would not move to table and I ask if he will agree to deal with that on Tuesday. If we are able to reach the accommodation to stack votes, it will be handled at that time. If not, of course, he will be protected with a rollcall vote at the time we are voting again.

Mr. EXON. I have no objection whatsoever. That is what I have been indicating to the leader all day long. I want a rollcall vote; it has been ordered; it is at the desk. We can have a rollcall vote now or Tuesday. We can stack it. We can do anything we want with it. I am trying to accommodate completely the leaders and the other Members of the body.

I understood the Senator to say that if we can get the stacking of votes on Tuesday, which he does not have yet, we would vote on it on Tuesday. Otherwise, if we plow ahead, as the leader of the bill might unfortunately be forced to do because he could not get the time agreement, I would anticipate that we would vote on it sometime this evening or on Tuesday, either of which is acceptable to this Senator.

Mr. SIMPSON. I thank the Senator.

AMENDMENT NO. 612

(Purpose: To improve housing for temporary agricultural workers)

Mr. METZENBAUM. Mr. President, I call up an amendment which is at the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The Chair reminds the Senator from Ohio that the other amendment is still pending.

Mr. METZENBAUM. I ask unanimous consent that the amendment of the Senator from Nebraska be temporarily laid aside until that matter is resolved and that I be permitted to call up an amendment at this point.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. I call up an amendment which is at the desk, having to do with the subject of housing.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 612:

On page 44, line 19, insert "for a period of not to exceed two years from the date of enactment of this Act" after "permitted".

Mr. METZENBAUM. Mr. President, this amendment restores the principle that growers who use temporary foreign workers must provide those foreign workers with housing.

Under the current law, growers are required to do this, and it has not proved to be a major burden; but the bill changes the current standard by allowing housing allowance instead. That creates a number of problems.

Mr. President, I ask unanimous consent that my further remarks in connection with this matter be permitted before the conclusion of the day.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that this amendment be set-aside and that it be dealt with on Tuesday, with or without a rollcall vote, depending upon whether or not the matter can be resolved with the managers of the bill; that if we cannot resolve it, the rollcall vote occur at such time as the rollcall votes occur on Tuesday, or such later time when other amendments dealing with this amendment are to be considered.

The PRESIDING OFFICER. The rollcall vote has not been called for, but, without objection, the request is granted.

Mr. SIMPSON. Mr. President, this matter of the growers has been a continuing discussion.

I understand that the amendment is to sunset, after 2 years, the provision permitting employers to provide a housing allowance, rather than housing, provided there is housing available in the area. I must say that I think that is too short a time. I think migrant labor housing in sufficient quantity is not presently available. It is certainly a heavy issue.

We provided in the bill for housing allowances, which would allow growers to pay an allowance so that the workers could rent quarters in town or wherever. The special temporary worker housing is preferable, but it does not exist in adequate amounts at the present time.

I see my two colleagues who are vitally concerned about the migrant temporary worker issue. It will take time to build that kind of housing. I agree with the Senator; I think it is necessary.

There are zoning problems in connection with housing. One of the most vexing public jobs I have held was with the planning and zoning commission.

Two years seems an insufficient amount of time. If the Senator from Ohio would increase the time limit to more appropriate years, I would certainly accept the amendment. Two years is not enough.

Mr. METZENBAUM. Mr. President, I point out to my distinguished colleague from Wyoming that at the present time the housing is required. The bill before us eliminates the housing and provides for housing allowances.

I think there is some merit to what the Senator is saying, that if you are going to build housing, it cannot be done overnight. That is the reason why I set the 2-year period. It is my view that it is an adequate time.

However, since I have already indicated that I am prepared to have this matter be set for a vote on Tuesday, I hope that, although I will not be here on Monday, sometime Tuesday morning he and I may be able to get together and resolve this matter on an amicable basis. I am presently prepared to tell him that I am willing to concede and go up as far as 2 years and 2 weeks, but we might go a little further than that if he twisted my arm.

Mr. SIMPSON. We might try 6 years and 2 weeks and see where we can go.

Mr. METZENBAUM. Mr. President, the bill changes the longstanding requirement that employers must provide housing to temporary foreign workers. This drastic weakening of the current requirement will not result in decent safe housing for foreign workers. The result will be quite the opposite.

First, there is no assurance that the allowance will be adequate. The bill requires only a reasonable allowance. What is reasonable? At the very least, there will be major problems in administering this vague standard and in enforcing compliance.

Second, it is totally unrealistic to assume that decent housing will be available in many rural areas where these workers will be employed. The bill provides that an allowance is permitted only if suitable housing is available in the proximate area of employment, Again, this language creates a vague, unenforceable standard. How far does the worker have to travel?

Finally, we have no assurance that the worker will use the allowance for housing—perhaps he or she will need it for food or medicial care. They may decide to sleep in the fields rather than take the time to find housing, travel to it and spend the allowance.

The result of all those factors is certain to be workers sleeping in ditches and plastic bags.

Why are we abandoning—in 1985—worker protections that have been in existence for many years? We should be going forward not backward in our concern about the working conditions of a group that has been historically exploited.

As I will explain further, this amendment does not reinstate the

housing requirement immediately. Since the H-2 Program will be expanded to some extent, it creates a 2-year delay to allow a realistic period for growers to develop housing to meet the requirement.

Mr. WILSON addressed the Chair.

Mr. METZENBAUM. Is the Senator from California addressing himself to this issue?

Mr. WILSON. Yes.

Mr. President, I simply wanted to confirm what the distinguished manager of the bill has stated. There are a number of States that do require housing.

The PRESIDING OFFICER. The Senator from California has not been recognized.

Mr. WILSON. I thought the Chair had recognized me.

The PRESIDING OFFICER. The Senator from California is recognized.

Mr. WILSON. Mr. President, there are several States, typically those with the greatest experience in the use of seasonal workers, which have provided for housing. This subject is addressed in the amendment that we are going to propose. It was addressed in the amendment that was the subject of such discussion.

I say to the Senator from Ohio that the Senator from Wyoming is correct. There are other States which would be required, under the amendment that is to be proposed, to provide housing or a housing allowance, and that was done explicitly with the fact of life in mind that there are some which will have to make provisions.

So I simply observe that the Senator from Wyoming is correct in stating the case.

Mr. METZENBAUM. Mr. President, I just want to respond very briefly to my friend from California and point out that a housing allowance does not really solve the problem for a migrant worker. There are not that many Hilton Hotels or Sheraton Hotels or even Days Inns that are located in the rural areas where the migrant workers can use the housing allowance. I am afraid that what will happen is that he or she will get the housing allowance and will wind up sleeping in the ditch.

Before I say I am willing to strike that, I shall say that the law does not now provide for any housing allowance. It does have a requirement that housing be provided so that the legislation we had before—so that if we do not pass any legislation, then the housing has to be provided since this bill eliminates any provision for the housing and permits the housing allowance.

I think providing an extremely long time to provide that housing is totally unreasonable but, since the Senator from Iowa is such a reasonable person, perhaps between now and Tuesday, we can work out some compromise period closer to the 2-year period I have suggested. If the Senator from California and the Senator from Wyoming are their usual reasonable selves, perhaps we can work this matter out.

Mr. President, I say to the Senator from Wyoming that I had asked unanimous consent to set this matter over until Tuesday. I do not think there is anything further on it that I have to state, unless he does. It seems to me we are now back on the Exon amendment.

Mr. SIMPSON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. TRIBLE). Without objection, it is so ordered.

Mr. DOLE. Mr. President, based on the conversation we just had with the distinguished minority leader and the manager of the bill on our side, I think it is safe to assume that there will be no more votes this evening. We will have to work out an order for rollcall votes beginning at 10 a.m. on Tuesday. We will try that on Monday.

I understand that those who have offered amendments are prepared to vote now. But there will be no more votes today.

So we will go over until noon on Monday, and after the special orders this will be the pending business.

Mr. SIMPSON. Mr. President, I thank the majority leader and the minority leader.

My colleagues have been very patient, and I appreciate that.

I say to the majority leader that with respect to Members who have amendments pending, we will arrange with their staffs to have the issues presented on Monday or Tuesday, at the mutual convenience of the parties.

We hope to arrive at some type of unanimous-consent agreement on Monday by which we would go to a time certain for a vote on Tuesday, and that is what we will strive for. But we will process the amendments on Monday and Tuesday, and the proponents of the amendments have indicated their willingness to do that.

We hope to extricate the Social Security amendment from the action, and that is a necessary thing.

That is a necessary thing. It is the thing that has delayed the progress. I assure those listening that I appreciate their patience and I hope we did not cause too much inconvenience to them on Friday afternoon. To all of those who have been inconvenienced on both sides of the aisle, I regret that.

AMENDMENT NO. 617

(Purpose: Technical amendment)

Mr. SIMPSON. Mr. Chairman, I have a technical amendment to require that the majority leader and the minority leader of the U.S. Senate be consulted by the President pro tempore before he appoints or nominates persons to be appointed members to the Commission on Temporary Agricultural Worker Programs and the Legalization Commission.

I submit that amendment and ask for its consideration.

Mr. BYRD. Mr. President, reserving the right to object.

Mr. President, I remove my reservation.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON] proposes an amendment numbered 617:

Technical amendment: "To require that the majority leader and the minority leader of the U.S. Senate be consulted by the President pro tempore before he appoints or nominates persons to be appointed members of the Commission on Temporary Agricultural Worker Programs and the Legalization Commission."

1. On p. 62, line 11, after "Senate", insert: "after consultation with the majority leader and the minority leader of the Senate".

2. On p. 69, line 3, after "Senate", insert: "after consultation with the majority leader and the minority leader of the Senate".

The PRESIDING OFFICER. Is there further debate?

Mr. SIMPSON. Mr. President, after a review of S. 1200 and the intent of the two commissions, I am advised that that is really not a requirement at this time. I shall withdraw the amendment.

The amendment was withdrawn.

AMENDMENT NO. 618

Mr. SYMMS. Mr. President, I have an amendment which I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. SYMMS] for himself, Mr. GOLDWATER, and Mr. TRIBLE, proposes an amendment numbered 618:

At the appropriate place, insert: "Notwithstanding any other provision of law or of this Act, no agency or instrument of the United States, or any corporation or other entity created by act of Congress shall extend any loan or other form of credit of whatever nature to any government or agency thereof, of any country in North America which allows access to its ports to any nuclear weapons delivery-capable Soviet naval vessel (except vessels in extremis) at any time after September 20, 1985."

Mr. SYMMS. Mr. President, the amendment is self-explanatory. I might say that it is cosponsored by the distinguished chairman of the Committee on Armed Services, Mr. GOLD-

WATER, and the distinguished occupant of the Chair, Mr. TRIBLE, and myself.

The purpose of the amendment is to address the growing problem within Mexico and Central America of Soviet intervention. I know that the distinguished Senator from Wyoming has worked long and hard on immigration legislation. I just had a discussion with one of the most respected Members of the Senate, Senator LONG of Louisiana, about the importance in the view of many Senators here of immigration legislation.

The significance of the amendment that is now pending before the Senate is that if, in fact, the Soviets continue their reckless expansion, as they have done ever since the end of World War II, of their sphere of influence and their orbit, no matter what kind of legislation this body passes, we are going to have a tremendous influx of more than immigrants but refugees who will be seeking political asylum from our good friends and neighbors south of the border.

I think the amendment significant when one reads in the press today that our friends in Mexico have invited a Soviet naval squadron to make a port call in Vera Cruz on October 4. I only say to my colleagues if an amendment of this nature is not acted on by the Congress and the U.S. Government does not take a firm stand on where we are with respect to our policy in our own hemisphere, in 1, 2, 3, or 4 years from now, it will be far too late because there will be a permanent Soviet squadron in Vera Cruz and it will be too late to act on an amendment such as this. So I offer this amendment.

I know the distinguished majority leader has said there can be no record votes on this amendment, but it is the intention of the author of this amendment to seek a record vote to the amendment on Tuesday. So I say to the manager of the bill that I would be willing to have this amendment set aside as pending business if the floor manager wants to act on the bill.

It is my intention that we should vote on this before this legislation is passed. It is totally, in my opinion, consistent with the efforts of the Senator from Wyoming to gain control of our borders, because without recognition of the international implications of Soviet expansionism into the Western Hemisphere, no immigration reform legislation is going to be able to stop the flood of refugees and immigrants that will come into this country.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, when they associated my name with that, I just trembled and went to pieces there. That is a provocative amendment. It certainly is. I am not a cosponsor of that amendment, I can assure you.

However, I am being humorous. That is my sword and my shield. The Senator from Idaho is quite serious. I know him. And the cosponsors are quite serious.

It would be very regrettable for me to deal with that issue on immigration reform. That would be something I could not do under any circumstances. But it is a very provocative issue. It is the pending business. Without going any further on that, we shall deal with it on Monday.

At this point, I indicate that we have failed to come up with a unanimous consent agreement. We have indicated that to the Members on both sides of the aisle.

We will proceed with the amendment process on Monday as we come in at noon, and we have already arranged for times. The proponents are ready and the managers will be ready to proceed at that time.

AMENDMENT NO. 599

(Purpose: To express the sense of Congress that the English language is the official language of the United States)

Mr. DOMENICI. Mr. President, I oppose this amendment to the immigration bill expressing the sense of the Senate that the English language be the official language of the United States. I wish to take a moment to state why.

My distinguished colleague from Idaho has highlighted some legitimate concerns. It is important that all Americans learn to speak English in order to take full advantage of all the benefits that this country has to offer. No one knows that better than I. My father came to this country as a young man. He never learned to write English because he was 14 when he arrived in Albuquerque, NM, from Italy. He came here to work in a grocery store owned by his uncle. The luxury of not working was never available to him. My father realized that he was at a disadvantage because of that fact, and that is why my father and mother were adamant that I go to school and stay in school and learn English. And I thank them every day of my life for that.

But this amendment won't remedy any of the problems which the Senator from Idaho has pointed out. It won't help anyone learn the English language. It won't improve our society. It won't lead to a more cohesive nation. In fact, it will create a more divided nation. This amendment is an insult to all Americans for whom English is not the first language now at this stage of their life and to all those Americans who would like to learn English but who can't for one reason or another.

You know, I come from a pretty unique State. New Mexico is a land where the Indians, the Hispanics, and the European settlers have come together to create a tricultural society. It's a State where nobody is in the majority, everybody is a minority. So we New Mexicans have had to learn to live together in harmony. It was not always easy, but we did it. We created something special out there through respect and understanding of our differences and by concentrating on our similarities. This amendment will only upset that delicate balance; it concentrates on our differences and ignores our similarities as people.

Do not forget that long before the Pilgrims landed on Plymouth Rock, Spanish was being spoken in New Mexico. The same is true of California, Florida, and Texas. And we don't know how long the Native American languages have been echoing through the mesas of New Mexico and the rest of this land. Far longer than the speakers of English have been here, that's for sure. Let us not insult the proud heritages of these people by assuming a position of linguistic superiority.

I oppose this amendment because it does nothing that it is supposed to do. It won't help a poor Italian grocer to learn how to write English. It won't help a Spanish-speaking person to learn how to speak English. It won't create a better, stronger, more cohesive American society. It will only insult those for whom a language other than English is a major part of their culture and their lives.

THE CALENDAR

Mr. SIMPSON. Mr. President, I inquire of the minority leader if he is in a position to adopt any of the following joint resolutions: Calendar Order No. 288, Senate Joint Resolution 68; Calendar Order No. 289, Senate Joint Resolution 139; Calendar Order No. 290, Senate Joint Resolution 141; Calendar Order No. 293, Senate Joint Resolution 173; and Calendar Order No. 294, Senate Joint Resolution 186.

Mr. BYRD. Mr. President, there is no objection to the items enumerated.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the calendar items just identified en bloc and agreed en bloc and all preambles be considered and agreed to en bloc.

The PRESIDING OFFICER. Without objection, they are considered en bloc and agreed to en bloc.

WILLIAM BEAUMONT DAY

The joint resolution (S.J. Res. 68) to designate November 21, 1985, as "William Beaumont Day," was considered, ordered to be engrossed for a third reading, read the third time and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 68

Whereas November 21, 1985 marks the two-hundredth anniversary of the birth of William Beaumont;

Whereas Dr. Beaumont was a pioneer in American physiology through his study of the human digestive process;

Whereas Dr. Beaumont typified the prepared mind, the patient observer, and the brilliant investigator, who significantly expanded the peripheries of knowledge;

Whereas Dr. Beaumont embodies the zest for knowledge and devotion to reason which characterized the Nation during his lifetime;

Whereas physicians, scientists and researchers of associations, including the Federation of American Societies for Experimental Biology, the American Academy of Occupational Medicine, and the Association of Military Surgeons, continue in Beaumont's tradition and claim him as the founding father of such organizations;

Whereas several States honor his memory, including Connecticut, where he was born; Vermont, where he was licensed; Michigan, where he conducted his pioneering research; New York, where he practiced medicine and conducted research; and Missouri, where he built a thriving medical practice: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That November 21, 1985 is designated as "William Beaumont Day" and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day with appropriate ceremonies and activities.

NATIONAL HOME CARE WEEK

The joint resolution (S.J. Res. 139) to designate the week of December 1, 1985, through December 7, 1985, as "National Home Care Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 139

Whereas organized home health care services to the elderly and disabled have existed in this country since the last quarter of the eighteenth century;

Whereas home health care, including skilled nursing services, physical therapy, speech therapy, social services, occupational therapy, health counseling and education, and home-maker-home health aide services, is recognized as an effective and economical alternative to unnecessary institutionalization;

Whereas caring for the ill and disabled in their homes places emphasis on the dignity and independence of the individual receiving such services;

Whereas the Federal Government has supported home health services since the enactment of the medicare program, with the number of home health agencies providing services increasing from less than five hundred to more than five thousand; and

Whereas many private, public and charitable organizations provide these and similar services to millions of patients each year preventing, postponing, and limiting the need for institutionalization and enabling such patients to remain independent: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of December 1, 1985 through December 7, 1985, is designated as "National Home Care Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe the week with appropriate programs, ceremonies, and activities.

NATIONAL TOURISM WEEK

The joint resolution (S.J. Res. 141) to designate the week beginning on May 18, 1986, as "National Tourism Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 141

Whereas tourism is vital to the United States, contributing to economic prosperity, employment, and international balance of payments;

Whereas travelers from the United States and other countries spent $210,000,000,000 in the United States during 1983, directly producing four million, six hundred thousand jobs, $45,800,000,000 in wages and salaries, and over $25,000,000,000 in Federal, State, and local tax revenues;

Whereas, if viewed as a single retail industry, the travel and tourism sector of the economy constituted the second largest retail industry in the United States in 1983 as measured by business receipts;

Whereas tourism contributes substantially to personal growth, education, and intercultural appreciation of geography, history, and people of the United States;

Whereas tourism enhances international understanding and good will; and

Whereas, as people throughout the world become aware of the outstanding cultural and recreational resources available across the United States, travel and tourism will become an increasingly important aspect of the daily lives of the people of the United States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week beginning May 18, 1986, is hereby designated as "National Tourism Week," and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

NATIONAL SEWING MONTH

The joint resolution (S.J. Res. 173), to designate the month of September 1985 as "National Sewing Month," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 173

Whereas the sewing industry annually honors the approximately fifty million people who sew at home and the approximately forty million people who sew at least part of their wardrobe;

Whereas the home sewing industry generates over $3,500,000,000 annually for the economy of the United States; and

Whereas innumerable careers in fashion, retail merchandising design, patternmaking, and textiles have had their genesis in the home and in elementary school home economics classes; Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of September 1985 is designated "National Sewing Month". The President is requested to issue a proclamation calling upon the people of the United States to observe that month with appropriate ceremonies and activities.

NATIONAL HISTORICALLY BLACK COLLEGES WEEK

The joint resolution (S.J. Res. 186) to designate the week of September 23, 1985, through September 29, 1985, as "National Historically Black Colleges Week," was considered, ordered to be engrossed for a third reading, read the third time and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 186

Whereas there are one hundred and two historically black colleges and universities in the United States;

Whereas such colleges and universities provide the quality education so essential to full participation in a complex, highly technological society;

Whereas black colleges and universities have a rich heritage and have played a prominent role in American history;

Whereas such institutions have allowed many underprivileged students to attain their full potential through higher education; and

Whereas the achievements and goals of historically black colleges are deserving of national recognition: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of September 23, 1985, through September 29, 1985, is designated as "National Historically Black Colleges Week" and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States and interested groups to observe such week with appropriate ceremonies, activities, and programs, thereby demonstrating support for historically black colleges and universities in the United States.

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the joint resolutions were agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nomination of Vice Adm. James A. Lyons, Jr.

The PRESIDING OFFICER. Without objection, it is so ordered.

NAVY

The assistant legislative clerk read the nomination of Vice Adm. James A. Lyons, Jr., to be admiral.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the nomination just identified be confirmed.

Mr. BYRD. Mr. President, let the RECORD show there is no objection from this side.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to reconsider was laid on the table.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has given its consent to this nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Senate resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONDEMNING THE KIDNAPING OF PRESIDENT DUARTE'S DAUGHTER

Mr. BYRD. Mr. President, I call up the resolution which is at the desk which was submitted by Senator KENNEDY, Senator LUGAR, Senator BIDEN, Senator PELL, and Senator BOREN.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 219) condemning the kidnaping of President Duarte's daughter.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the resolution.

Mr. KENNEDY. Mr. President, I am sure that all Senators as well as all Americans were stunned to learn that President Duarte's daughter had been assaulted and kidnaped. This is an act of terrorism, pure and simple, and it shocks the conscience of civilized peoples throughout the world.

On an issue like this, all Americans are united. Our thoughts are with President Duarte and with the other members of his family—as are our prayers. And whether this is the act of common criminals or of political extremists, it is an outrage.

We join together today to express our anger, to extend our sympathies to President Duarte and his family, and to urge President Reagan to offer whatever assistance may be requested by the Government of El Salvador to locate Ines Guadelupe Duarte Duran, to secure her safe release, and to bring her kidnappers to speedy justice.

Let us pray that Ms. Duarte Duran will soon be released and allowed to return to her family.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 219) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. Res. 219

Resolved,

Whereas the oldest daughter of President Jose Napoleon Duarte of El Salvador, Mrs. Ines Guadelupe Duarte Duran, was assaulted and kidnapped yesterday in her home city of San Salvador;

Whereas the people responsible for the kidnapping are armed terrorists, in the course of the kidnapping, killed a driver and wounded a bodyguard; and

Whereas such acts of terrorism against innocent civilians deserve the condemnation of all civilized peoples throughout the world;

It is the sense of the Senate that:

The kidnapping of President Duarte's daughter is to be deplored in the strongest possible terms;

The individuals responsible for this unconscionable and unwarranted act of terrorism are to be condemned;

The sympathy and prayers of the American people are with the Duarte family and with the people of El Salvador during this ordeal; and

The individuals responsible for this crime should release Ines Guadelupe Duarte Duran immediately and safely.

The President of the United States should provide whatever assistance the government of El Salvador or the Duarte family may request to achieve the safe return of Mrs. Duarte Duran and to bring the kidnappers to justice;

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MESSAGES FROM THE HOUSE

At 1:36 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the amendment of the House to the bill (S. 444) to amend the Alaska Native Claims Settlement Act.

The message also announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 61. A concurrent resolution to commend Pete Rose on becoming the all-time Major League leader in base hits.

ENROLLED JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, September 13, 1985, she had presented to the President of the United States the following enrolled joint resolution:

S.J. Res. 31. Joint resolution to designate the week of November 24 through November 30, 1985, and the week of November 23 through November 29, 1986, as "National Family Week."

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-374. A resolution adopted by the General Court of the Commonwealth of Massachusetts; to the Committee on Armed Services.

"RESOLUTION

"Whereas, the shipbuilding industry in Massachusetts is part of both the past and present history of the Commonwealth; and

"Whereas, the General Dynamics Quincy Shipyard recently observed its 100th year of operation and credits among its accomplishments more than 350 ships of all classes and types for the Navy; and

"Whereas, the extraordinary production records achieved during two world wars and thereafter include such proud naval vessels as the U.S.S. *Lexington I* and *II*, the *Wasp*, the *Massachusetts*, the *Nevada*, the *North Dakota*, the *Quincy*, the *Boston*, the *Des Moines*, the *San Diego*, the *Northampton*, and the nuclear-powered ships *Bainbridge* and *Long Beach;* and

"Whereas, many of these ships distinguished themselves at Pearl Harbor, Guadalcanal, Iwo Jima, Okinawa, the battles of the Coral Sea, Philippine Sea and Leyte Gulf; and

"Whereas, the last major Navy contract awarded to the Quincy yard is in the process of being completed and no new ship construction contracts have been awarded; and

"Whereas, major layoffs began in May of 1985 from a workforce of 6,200 skilled and unskilled workers; and

"Whereas, the addition of these workers to the ranks of the unemployed will add an undue hardship to their families, to the economy of the South Shore and the Commonwealth of Massachusetts; therefore be it

"*Resolved*, That the Massachusetts House of Representatives strongly supports the International Union of Marine and Shipbuilding Workers of America, locals 5, 90, and 151 and management officials of General Dynamics to secure naval contracts for the Quincy yard and requests the Secretary of the Navy and the Massachusetts congressional delegation to recognize the critical situation presently existing at the Forge River shipyard; and be it further

"*Resolved*, That a copy of these resolutions be forwarded by the Clerk of the House of Representatives to the Secretary of the Navy and the presiding officer of each branch of Congress and to the members thereof from this Commonwealth."

POM-375. A resolution adopted by the General Court of the Commonwealth of Massachusetts; to the Committee on Banking, Housing, and Urban Affairs.

"RESOLUTION

"Whereas, the current standard of living of many poor and elderly Americans is such that they are compelled to live in substandard housing and because of depressed finances are often unable to pay to adequately heat their living quarters; now therefore be it

"Resolved, That the Massachusetts General Court respectfully urges the Congress of the United States to enact legislation that would give increased amounts of direct rental assistance to house poor and elderly citizens in the two, three and four-family homes of their communities through local housing and redevelopment authorities; and be it further

"Resolved, That a copy of these resolutions be transmitted forthwith by the Clerk of the House of Representatives to the President of the United States, the presiding officer of each branch of Congress and to the members thereof from this Commonwealth."

POM-376. A joint resolution adopted by the Legislature of the State of California; to the Committee on Banking, Housing, and Urban Affairs.

"SENATE JOINT RESOLUTION No. 18

"Whereas, International trade is an integral and vital part of the California economy, accounting for over one million jobs, 17% of our gross state product, and 25% of our agricultural sales; and

"Whereas, The United States and California have experienced rising and record international trade deficits over the past three years; and

"Whereas, These deficits have been responsible for lower economic growth, higher unemployment, widespread bankruptcies and foreclosures, and a substantial loss of export sales; and

"Whereas, California's agricultural industry has been particularly hard hit by successive declines in export sales of 21% in 1982 and another 8% in 1983; and

"Whereas, These growing trade deficits, unless they are soon reversed, may cause the permanent loss of export markets for California farmers and manufacturers; and

"Whereas, The rising burden of farm sector debt and loss of export markets threaten an increasing wave of farm foreclosures and bankruptcies; and

"Whereas, The economic hardships resulting from the massive trade deficits have brought, and will continue to bring, inordinate pressures on government for protectionist measures; and

"Whereas, Forty years of progress towards freer markets, expanding international trade, and vastly improved standards of living around the world would be jeopardized by increasing protectionism; now, therefore, be it

"Resolved by the Senate and the Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President, the Congress, and the Board of Governors of the Federal Reserve System of the United States to provide the strong, prompt, and decisive leadership necessary to reverse the growing U.S. trade deficits; and be it further

"Resolved, That the Legislature respectfully memorializes the President, the Congress, and the Board of Governors of the Federal Reserve System of the United States to exercise the monetary and fiscal policies necessary to reduce U.S. interest rates, to discourage foreign exchange market speculation which has contributed to an overvalued U.S. dollar, and to encourage other nations to assist in reducing the current lopsided U.S. trade deficit; and be it further

"Resolved, That the Secretary of the Senate transmit a copy of this resolution to the President and Vice President of the United States, to the Chairman of the Board of Governors of the Federal Reserve System, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-377. A joint resolution adopted by the Legislature of the State of California; to the Committee on Commerce, Science, and Transportation.

"SENATE JOINT RESOLUTION No. 17

"Whereas, The mix of foreign and domestic shipping at ports on the West Coast of the United States is an important aspect of the economic health and vitality of our nation and its respective states; and

"Whereas, The regulation of vessels and marine affairs which is not achieved by consensus and cooperation among the states and with the federal government causes confusion and conflict to vessel operators and can negatively impact state and federal efforts to increase the use of West Coast ports for foreign trade; and

"Whereas, Air emission standards imposed by various federal, state, and local entities are a complicated and confusing set of policies which affect domestic and foreign vessels differently; and

"Whereas, The Clean Air Act is an example of a law which is unclear as to whether the state and local jurisdictions are preempted from imposing vessel air emission standards; and

"Whereas, Seventy percent of vessel activities on the West Coast and almost 80 percent in California are by foreign flag vessels whose air emissions cannot be successfully regulated by state or local government; and

"Whereas, The practice has been for the United States to deal internationally with foreign governments regarding agreements concerning maritime issues, such as the safety of life at sea; and

"Whereas, Uniformity is desirable in vessel air emission standards so that it is not discriminatory against domestic vessels and their operators; now, therefore, be it

"Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the Congress of the United States to undertake or to direct the United States Coast Guard to undertake a study on vessel air emission standards which recognizes the importance of uniformity and its effect on foreign trade; and be it further

"Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, the Secretary of Transportation, the Speaker of the House of Representatives, and each Senator and Representative from California in the Congress of the United States."

POM-378. A joint resolution adopted by the Legislature of the State of California; to the Committee on Commerce, Science, and Transportation.

"SENATE JOINT RESOLUTION No. 15

"Whereas, The federal Coastal Zone Management Act of 1972, as amended, was enacted to encourage the coastal states to establish and carry out effective and enforceable coastal management programs for the purpose of preserving, protecting, beneficially using, and developing coastal resources in a manner that promotes local, state, and national interests; and

"Whereas, The federal act provides for incentives, including financial assistance through grants to coastal states, and, once a state coastal program has been certified by the Secretary of Commerce as being in conformity with the act, requires all federal agencies conducting or supporting activities which affect the state's coastal zone to carry out those activities in a manner consistent with the approved state coastal program; and

"Whereas, The people of this state adopted Proposition 20 in 1972, and the California Legislature subsequently enacted the California Coastal Act of 1976, on the understanding that the federal act authorizes states with federally approved coastal management programs to review federal activities which affect the state's coastal zone for consistency with its own coastal program and provides financial assistance to California for the purpose of managing this nation's coastal resources in California; and

"Whereas, The California Legislature enacted the "McAteer-Petris Act" in 1969 creating the San Francisco Bay Conservation and Development Commission, and the Suisun Marsh Preservation Act of 1977, that formed the basis of the San Francisco Bay segment of California's Coastal Management Program for the purpose of managing this nation's coastal resources in San Francisco Bay; and

"Whereas, Nearly thirty million dollars ($30,000,000) of the fifty million dollars ($50,000,000) expended to prepare, adopt, and implement California's coastal program, which was approved by the United States Department of Commerce in 1977, has been provided to the state by the federal government under the authority of the federal act; and

"Whereas, California's coastal program established a unique partnership between state and local governments under which local governments assume much of the state's burden for managing coastal resources after local governments have prepared local coastal programs consistent with the policies of the California Coastal Act of 1976 and local protection programs consistent with the provisions of the Suisun Marsh Preservation Act of 1977 and the Suisun Marsh Protection Plan; and

"Whereas, The California Coastal Act of 1976 requires that not less than 50 percent of the funds received by the state pursuant to the federal act be used for the preparation, review, approval, certification, or implementation of local coastal programs; and

"Whereas, The State of California and its local coastal governments have made good progress in completing the local coastal programs required by the California Coastal Act of 1976 and the State of California and Suisun Marsh local governments have completed the local protection program required by the Suisun Marsh Preservation Act of 1977; and

"Whereas, The California Coastal Commission and the San Francisco Bay Conser-

vation and Development Commission have, in numerous cases, exercised the federal consistency review authority provided pursuant to the federal act, to ensure that federal activities are conducted in a manner which takes into account, and is protective of, state and local government interest and concerns; and

"Whereas, The authority of the federal government to provide financial assistance to California and the other coastal states will terminate in 1985 unless reauthorized by the President and the Congress; now, therefore, be it

"Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to reauthorize the Coastal Zone Management Act of 1972 so that California and other coastal states can continue to carry out their responsibilities to the citizens of the nation in wisely protecting, managing, and developing coastal resources; and be it further

"Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and the Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-379. A joint resolution adopted by the Legislature of the State of California; to the Committee on Commerce, Science, and Transportation.

"SENATE JOINT RESOLUTION No. 4

"Whereas, While the National Academy of Sciences recommends that the 55 miles per hour speed limit be retained on most highways, some members felt that it would be appropriate to raise the speed limit on selected highways; and

"Whereas, Data reported by the State of Californnia to the Federal Highway Administration shows that compliance with the 55 miles per hour National Maximum Speed Limit is deteriorating in California; and

"Whereas, There is a common perception that public support for the 55 miles per hour National Maximum Speed Limit is eroding; and

"Whereas, Speeds are higher on most rural freeways as compared to urban freeways, while fatal and injury accidents are less frequent on rural freeways than urban freeways; and

"Whereas, The State of California can be sanctioned by the federal government when 50 percent or more of the traffic is reported as traveling at speeds greater than 55 miles per hour, resulting in the loss of twenty-eight million dollars ($28,000,000) of federal highway funds; and

"Whereas, The State of California can be sanctioned by the federal government if the state's 55 miles per hour maximum speed law is repealed, and this could result in a substantial loss of federal highway funds; and

"Whereas, There are three states which have been advised they are subject to federal sanctions; and

"Whereas, The Calfornia Highway Patrol has maintained wide-ranging routine and special enforcement programs in an effort to improve highway safety and avoid federal sanctions and approximately 1,000,000 violators are arrested annually, which is more than in any other state and is approximately twice the state total prior to the enactment of the 55 miles per hour speed limit; and

"Whereas, The 55 miles per hour National Maximum Speed Limit had become a dominant focus of the California Highway Patrol law enforcement efforts, with as many as two out of ever five arrests being for maximum speed violations, and although these efforts would be considered by the United States Department of Transportation during sanction negotiations, greater safety benefits may be possible if law enforcement resources were redeployed to driving under the influence or other violation problems; now, therefore, be it

Resolved by the Senate and assembly of the State of California, jointly, That the Legislature of the State of California memorializes the Congress of the United States to enact legislation to allow state legislatures to raise the maximum speed limit on selected freeways; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States"

POM-380. A joint resolution adopted by the Legislature of the State of California; to the Committee on Commerce, Science, and Transportation.

"SENATE JOINT RESOLUTION No. 34

"Whereas, United Airlines, the largest airline serving California and the employer of some 15,000 persons in the state, and Pan American World Airways have entered into an agreement whereby United Airlines will purchase Pan American's pacific division; and

"Whereas, The traveling public and the shipping public will benefit from direct, single-plane, and on-line connecting service from United Airlines among all 50 states, including 15 cities served in California, and the Far East; and

"Whereas, The acquisition furthers United States aviation policy by ensuring a strong United States flag presence in the Far East, thereby benefiting and expanding trade and commerce between California and the lucrative Far East marketplace; and

"Whereas, The acquisition will benefit both Pan American World Airways and United Airlines, will protect the employees of Pan American, including those employees in California who will be offered employment opportunities with United Airlines, and will expand the United Airlines workforce as additional feeder and international flights are added in California; and

"Whereas, The United Airlines-Pan American World Airways agreement is subject to the approval of the United States Department of Transportation and the President of the United States and delay in granting that approval will adversely affect travelers, shippers, employees, and travel agents; now, therefore, be it

"Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California urges the United States Secreary of Transportation Elizabeth H. Dole to expedite the application for approval of the United Airlines-Pan American World Airways agreement in order to preserve the competitive position of the United States in the Far East and to ensure a smooth transition, to reduce uncertainty for travelers, and to strengthen the economic and trade opportunities for the United States and, in particular, the State of California on the Pacific Rim, and be it further

"Resolved, That the Secretary of the Senate transmit copies of this resolution to the President of the United States, to the United States Secretary of Transportation, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-381. A joint resolution adopted by the Legislature of the State of California; to the Committee on Finance.

"SENATE JOINT RESOLUTION No. 32

"Whereas, Section 1304 of the Tariff Act of 1930 (19 U.S.C. Sec. 1301 et seq.) requires that imported commodities of foreign origin, or their containers, be legibly and conspicuously marked to show the English name of the country of origin; and

"Whereas, These commodities are exempt from the country of origin markings where the product undergoes a substantial transformation due to further processing resulting in a new and different article of commerce with a different name, character, or use; and

"Whereas, In response to a February 11, 1985, United States Customs Service notice in the Federal Register, and after a request for comments on country of origin marking of imported pistachios, the California Pistachio Commission has presented significant and compelling evidence that imported pistachios are not substantially transformed in the United States; and

"Whereas, The country of origin marking should be required for imported pistachios because the roasting process does not substantially transform the raw product; and

"Whereas, Unmarked Iranian pistachios have been marketed in this country under such deceptive labels as 'Pride of California' and thereby capture 45 percent of the United States market and cost California growers $20 million in earning; now, therefore, be it

"Resolved by the Senate and Assembly of the State of California, jointly, That the Legislative respectfully memorializes the Secretary of the Treasury and the Assistant Secretary of the Treasury for Enforcement and Operations to take immediate action to adopt the proposal noticed by the United States Customs Service in the Federal Register on February 11, 1985, as it specifically relates to pistachios; and be it further

"Resolved, That the Secretary of the Treasury and the Assistant Secretary of the Treasury for Enforcement and Operations recognize the urgency of this request and the deceptive marketing of imported Iranian pistachios; and be it further

"Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President, to the Secretary of the Treasury, to the Assistant Secretary of the Treasury for Enforcement and Operations, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, and to each Senator and Representative from California in the Congress."

POM-382. A joint resolution adopted by the Legislature of the State of California; to the Committee on Foreign Relations.

SENATE JOINT RESOLUTION No. 3

"Whereas, It has been brought to the attention of the California Legislature through correspondence of the Order of St. Andrew the Apostle, a private nonprofit corporation with offices at the Greek Orthodox Archdiocese of North and South Amer-

ica, that the civil liberties of Greeks living in Turkey have been repeatedly threatened and denied; and

"Whereas, The California Legislature is justly proud of its long and unyielding commitment to the pervasive extension of freedom; and

"Whereas, The military junta headed by General Evren in Ankara has decreed that Turkish citizens of Greek descent cannot buy or sell real estate, thus creating the expectation that their homes and businesses will be confiscated; and

"Whereas, Turkish officials recently visited the worldwide center of Orthodox Christianity, known as Ecumenical Patriarchate in Constantinople and called Istanbul by Moslems; and

"Whereas, In this holy place, which corresponds to the Vatican, all sacred items are registered and declared the national property of Turkey; and

"Whereas, The famous Greek Orthodox School of Theology on the island of Halki, from which renowned religious leaders (including His All Holiness, Ecumenical Patriarch Demetrios I. and His Eminence, Archbishop Iakovos, Greek Orthodox Primate of the Americas) have graduated, is now a modest high school with a Turkish principal; and

"Whereas, While Turkish law prohibits any repair work to Christian churches, schools, businesses, or homes exceeding two hundred fifty liras (or less than two dollars) without a permit, such permits are systematically denied to Greek Orthodox residents of the country; and

"Whereas, There are continuous efforts to seize the income-producing properties willed by Greek Orthodox people to the famous hospital in Baluki, Istanbul, which treats all members of the community regardless of religion or nationality; and

"Whereas, At least 300 Greek Orthodox families were forced to flee Turkey last year because of these and other oppressive conditions; and

"Whereas, In addition, the ethnically Greek population of Turkey has dwindled from half a million at the turn of the century to fewer than 5,000, and 92 percent of those who remain are age 65 or older; and

"Whereas, These facts strongly suggest a Turkish policy of retrenchment and, indeed, of active persecution of those of Greek heritage; and

"Whereas, It is the intent of the California Legislature to urge that the United States government investigate these charges and, of substantiated, bring to bear upon the Turkish government appropriate economic and political pressure to correct the suppression of civil liberties; now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly,* That the Legislature of the State of California respectfully memoralizes the President and the Congress of the United States to petition the Turkish government to effect the protection of the civil liberties of Orthodox Christians; and be it further

"*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-383. A joint resolution adopted by the Legislature of the State of California; to the Committee on the Judiciary.

SENATE JOINT RESOLUTION No. 19

"Whereas, El Salvador, a small, densely populated country, has close to five million people in an area the size of Massachusetts; and

"Whereas, For decades, the country was run by and for the plantation owners, a small group of people of European descent traditionally referred to as the "Fourteen Families"; and

"Whereas, Popular unrest broke out during the army's massacre of between 10,000 and 30,000 Salvadoran citizens; and

"Whereas, The period between 1945 and 1979 was characterized by military rule, widespread corruption, fraudulent elections, and military repression of all political opposition; and

"Whereas, There occur continual instances of torture, mutilation, disappearances, and the individual and mass extrajudicial execution of men, women, and children from all sectors of Salvadoran society, perpetrated by extremist factions on all sides within and beyond the government; and

"Whereas, There has been a massive increase in the number of both internal and external refugees and displaced persons; and

"Whereas, During the last five years, as a result of the civil war, civilians have been killed in numbers totaling over 40,000, a figure constituting approximately one percent of the population and comparable to 1,750,000 civilian deaths in a country the size of the United States; and

"Whereas, The United States has an honorable tradition of accepting refugees from abroad who have suffered political repression during a period of civil conflict as demonstrated by the fact that the United States has granted extended voluntary departure status 15 times in the past 24 years, and the status currently is granted to Poles, Ethiopians, Afghans, and Ugandans; and

"Whereas, Thousands of refugees have fled El Salvador for fear of being harmed by the repression and hostilities that continue daily in the context of an internal civil strife; and

"Whereas, The United States, to date, has not fully accepted responsibility for its humanitarian obligation toward Salvadoran refugees, refusing to grant them political asylum or even extended voluntary departure status, and has forcibly repatriated over 35,000 people to El Salvador; and

"Whereas, Innocent men, women, and children are presently without a country and live with the realization that their return to El Salvador would once again place their lives in jeopardy in a country ravaged by an ongoing catastrophic civil conflict; now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly,* That the Legislature of the State of California respectfully memoralizes the Congress of the United States to recognize that the refugees from El Salvador are "political refugees" and to grant them asylum or extended voluntary departure status, and to enact, as a temporary measure, the Moakley-DeConcini Bill; and be it further

"*Resolved,* That the Legislature emphasizes that the endorsement of these actions by the Congress of the United States is based upon a humanitarian concern for the refugees of El Salvador, and in no way constitutes support or opposition to any fraction currently involved in conflict within that nation; and be it further

"*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-384. A joint resolution adopted by the Legislature of the State of California; to the Committee on Labor and Human Resources.

SENATE JOINT RESOLUTION No. 9

"Whereas, The California Legislature has enacted comprehensive laws regulating programs for the delivery of prepaid and reimbursed health care, including health care service plans, nonprofit hospital service plans, and disability insurance; and

"Whereas, California's laws protect the interest of citizens enrolled in these health care programs by requiring financial solvency of the plans and insurers, adequacy of the care provided to our citizens as patients, freedom of choice in selecting the health care provider desired by the patient, and other elements supporting fiscal responsibility and good patient care; and

"Whereas, The federal Employee Retirement Income Security Act (ERISA) has preempted state laws in the regulation of health care plans and programs in order to assure uniform employee benefit plans throughout the United States, but this explicit preemption has precluded the states from mandating additional benefits or protections for employees; now, therefore, be it

"Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the Congress of the United States to enact legislation amending the Employee Retirement Income Security Act to narrow its preemption provisions to permit the states to enact legislation which will provide benefits in addition to the protections required by ERISA and encourage states to achieve parity between insured and self-insured benefits; and be it further

"Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and representative from California in the Congress of the United States."

POM-385. A joint resolution adopted by the Legislature of the State of California; to the Committee on Foreign Relations.

"SENATE JOINT RESOLUTION No. 19

"Whereas, The United States of America and the People's Republic of China in December 1978 simultaneously issued a joint communique on the establishment of diplomatic relations between the United States of America and the People's Republic of China, wherein the United States of America and the People's Republic of China agreed to recognize each other and to establish diplomatic relations as of January 1, 1979; and

"Whereas, The joint communique expresses that the United States will maintain cultural, commercial, and other unofficial relations with the people of Taiwan; and

"Whereas, The California Legislature recognizes the friendly relations which have mutually existed between the people of California and the people of Taiwan, and therefore in 1983 on behalf of the people of the State of California through Senate Concurrent Resolution No. 40, Resolution Chap-

ter 120, extended to the people of Taiwan an invitation to join California as a sister state and to conduct mutually beneficial social, economic, educational, and cultural programs in order to bring our citizens closer together and to strengthen international understanding and good will; and

"Whereas, The People's Republic of China has expressed great interest in establishing friendship state relationships with states of the union in the United States of America in order to foster greater friendship and understanding between the United States and the People's Republic of China and to facilitate international trade and commerce between the two nations; and

"Whereas, Fourteen such friendship state relationships have been established between a Chinese province and an American state; and

"Whereas, Under the guidance of the principles as embodied in the joint communique on the establishment of diplomatic relations between the United States and China, numerous sister city relationships have been established between American and Chinese cities, among which are the sister city pairings of San Francisco-Shanghai, Los Angeles-Guangzhou, Oakland-Dalien, Sacramento-Jinan, and Long Beach-Qingdao; and

"Whereas, The people of Jiangsu Province of the People's Republic of China are desirous of entering into a friendship state relationship with the State of California in order to promote for mutual benefit the exchange of trade and commerce and the conduct of scientific, technical, agricultural, and educational programs which will enhance the potential for economic activity in California and Jiangsu; and

"Whereas, The Province of Jiangsu and the State of California share much in common in topography, climate, and industry; and

"Whereas, Jiangsu Province presents the opportunity for increased trade markets and the export of ideas, technology, products, and equipment from California, enhancement of international cooperation and communication, and social and cultural interchange which would facilitate understanding and goodwill between the citizens of California and Jiangsu Province; now, therefore, be it

"Resolved by the Senate of the State of California, the Assembly thereof concurring, That the California Legislature, on behalf of the people of California, declares Jiangsu Province as a friendship state, extends to the people of Jiangsu Province of the People's Republic of China an invitation to join California as a friendship state, and commits to the establishment of programs which will further the friendship state relationship; and be it further

"Resolved, That the appropriate state officials are encouraged to immediately contact the government of Jiangsu in order to negotiate a friendship agreement between Jiangsu and California which furthers mutual understanding and strengthening of friendly relations, enhances international trade and commerce, and facilitates the exchange of culture, education, science and technology; and be it further

"Resolved, That the Secretary of the Senate transmit copies of this resolution to the Governor of Jiangsu Province, the Governor of California, and to each Senator and Representative from California in the Congress of the United States."

POM-386. A resolution adopted by the Western Association of Fish and Wildlife Agencies relating to the proposed Bureau of Land Management and Forest Service Land Interchange; to the Committee on Agriculture, Nutrition, and Forestry.

POM-387. A resolution adopted by the Western Association of Fish and Wildlife Agencies relating to wetlands land trade; to the Committee on Agriculture, Nutrition, and Forestry.

POM-388. A resolution adopted by the Western Association of Fish and Wildlife Agencies relating to Forest Roading; to the Committee on Agriculture, Nutrition, and Forestry.

POM-389. A resolution adopted by the Western Association of Fish and Wildlife Agencies relating to the National Fish Hatchery System; to the Committee on Commerce, Science, and Transportation.

POM-390. A resolution adopted by the Western Association of Fish and Wildlife Agencies urging Congress to reauthorize the Central, Western and South Pacific Fisheries Development Act with funding through FY 1988; to the Committee on Commerce, Science, and Transportation.

POM-391. A resolution adopted by the Western Association of Fish and Wildlife Agencies urging Congress to reauthorize the Magnuson Fishery Conservation and Management Act of 1976 with funding at the FY 1983 level of $7.5 million; to the Committee on Commerce, Science, and Transportation.

POM-392. A joint resolution adopted by the Legislature of the State of Alaska; to the Committee on Commerce, Science, and Transportation.

"LEGISLATIVE RESOLVE NO. 17

"Whereas approximately 2,600,000,000 pounds of Alaska pollock is harvested annually, and much of this harvest is either taken by Japanese fishing vessels or purchased by the Japanese fishing industry from the American fishing industry; and

"Whereas Japanese industry utilizes approximately 70 percent of its supply of Alaska pollock for the production of surimi and surimi products, and a significant portion of this production is then exported to the United States, where surimi usage has risen from less than 1,000 tons in 1979 to 30,000 tons in 1984; and

"Whereas the American fishing industry receives approximately $.05 a pound for pollock, while the finished surimi products exported from Japan to the United States sell for approximately $1.75 a pound, aggravating the U.S. trade deficit that was $4,000,000,000 in 1984 for fishery products alone; and

"Whereas the capacity of the U.S. fishing fleet to harvest Alaska pollock has increased tremendously in recent years, with the American fishing industry harvesting almost 500,000 tons of pollock in 1984; and

"Whereas the surimi products presently used in the U.S. can be produced from just 102,000 tons of Alaska pollock; and

"Whereas Alaskan surimi is a wholesome food product, made from fresh-caught North Pacific pollock, and dollar for dollar has as much or more nutritional value than many traditional seafood products; and

"Whereas the U.S. Food and Drug Administration is requiring surimi marketed in the form of crab strips and other seafood analogue products to be inappropriately labeled as 'imitation,' and this labeling requirement would discourage sales of this nutritious product and the development of a new domestic industry; and

"Whereas surimi has great potential as a functional protein ingredient for many products in addition to seafood analogues, and the U.S. market for surimi in all forms continues to grow; and

"Whereas projections indicate that establishing a complete pollock surimi industry, including harvesting, processing, distribution and sales in the U.S., would produce a $6,000,000,000-a-year industry; and

"Whereas Alaska Pacific Seafoods in Kodiak, Alaska, in conjunction with the Alaska Fisheries Development Foundation, has demonstrated that top-quality surimi can be produced commercially in on-shore American facilities; and

"Whereas Alaska Pacific Seafood will produce an initial pack of 860,000 pounds of surimi for use by the Alaska Fisheries Development Foundation to encourage growth of the U.S. market for domestically produced surimi; and

"Whereas funding for this project was provided by the federal government through a Saltonstall-Kennedy grant to the Alaska Fisheries Development Foundation, with matching money and in-kind services provided by industry, fishing groups, and individuals;

"Be it resolved that the Alaska State Legislature expresses its appreciation for this project and gratitude for their support, to the United States Congress, the U.S. Department of Commerce National Marine Fisheries Service, and the many industry organizations, fishery groups, and individuals that contributed to the success of this project; and be it

"Further resolved by the Alaska State Legislature that it respectfully requests the United States Congress, the United States Department of Commerce National Marine Fisheries Service, and other concerned groups to continue their support for this project because it has the potential to encourage the full domestic use of the resources of the United States Fisheries Conservation Zone and to enhance the economic well-being of all persons in Alaska and in the other states of the nation; and be it

"Further resolved by the Alaska State Legislature that it respectfully requests the U.S. Food and Drug Administration in the U.S. Department of Health and Human Services to work with the seafood processing industry to develop a label other than 'imitation' to distinguish, as a consumer service, surimi products from traditional seafood products.

"Copies of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States; to the Honorable George Bush, Vice-President of the United States and President of the U.S. Senate; to the Honorable Thomas P. O'Neill, Jr., Speaker of the U.S. House of Representatives; to the Honorable John C. Danforth, Chairman, Senate Committee on Commerce, Science and Transportation; to the Honorable Walter B. Jones, Chairman, House Committee on Merchant Marine and Fisheries; to the Honorable John B. Breaux, Chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment, House Committee on Merchant Marine and Fisheries; to the Honorable Malcolm Baldrige, Secretary, U.S. Department of Commerce; to the Honorable Margaret M. Heckler, Secretary, U.S. Department of Health and Human Services; to the Honorable David Stockman, Director, Office of Management and Budget; to the Honorable Frank E. Young, Commissioner, U.S. Food and Drug Administration; to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the

Alaska delegation in Congress; to Chris Mitchell, Executive Director of the Alaska Fisheries Development Foundation; and to William G. Gordon, Assistant Administrator of the National Marine Fisheries Service, NOAA, U.S. Department of Commerce."

POM-393. A resolution adopted by the Western Association of Fish and Wildlife Agencies relating to oil and gas leasing in the Teshekpuk Lake special area; to the Committee on Energy and Natural Resources.

POM-394. A resolution adopted by the Western Association of Fish and Wildlife Agencies relating to oil and gas leasing in Bristol Bay; to the Committee on Energy and Natural Resources.

POM-395. A joint resolution adopted by the Legislature of the State of Alaska; to the Committee on Energy and Natural Resources.

"LEGISLATIVE RESOLVE NO. 25

"Whereas Congress is now considering legislation that includes provisions concerning the foreign export of Alaskan crude oil; and

"Whereas there are proposals before Congress to change existing federal law that effectively prohibit the foreign export of Alaskan crude oil; and

"Whereas the export of Alaskan crude oil would improve the national security of the United States by strengthening the defensive capabilities of our Pacific Rim allies; and

"Whereas the export of Alaskan crude oil would encourage increased domestic oil exploration and development; and

"Whereas Japan, Korea, and Taiwan have each expressed interest in obtaining Alaskan crude oil to diversify their energy sources; and

"Whereas the export of Alaskan crude oil would decrease the federal trade deficit with these nations; and

"Whereas exporting Alaskan crude oil to these nations would mitigate panic buying in the spot markets, thus moderating the cost of petroleum products for all consumers; and

"Whereas it is far more costly to ship oil from Alaska through the Panama Canal and to the Gulf Coast than to ship directly to the Pacific Rim; and

"Whereas the additional cost of shipping Alaska's oil to the Gulf Coast and Eastern states imposes an unnecessary burden on the consumers of those states; and

"Whereas under the International Energy Agreement, the United States is required to export crude oil to participating nations in the event of a worldwide disruption of oil supplies;

"Be it resolved that the Alaska State Legislature respectfully requests the United States Congress to enact laws providing for the export of all Alaskan crude oil; and be it

"Further resolved that the Alaska congressional delegation is urged to continue using its best efforts to obtain passage of legislation permitting the foreign export of Alaskan crude oil.

"Copies of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States; the Honorable George Bush, Vice-President of the United States and President of the U.S. Senate; the Honorable Thomas P. O'Neill, Jr., Speaker of the U.S. House of Representatives; the Honorable Robert Dole, Majority Leader of the U.S. Senate; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress; the National Conference of State Legislatures; and the Council of State Governments."

POM-396. A resolution adopted by the Council of the City of Santa Clara, California relating to SB 1219, the operations of hydroelectric plants after the expiration of the initial licenses; to the Committee on Energy and Natural Resources.

POM-397. A resolution adopted by the Western Association of Fish and Wildlife Agencies relating to the net economic values of fish and wildlife; to the Committee on Environment and Public Works.

POM-398. A resolution adopted by the Western Association of Fish and Wildlife Agencies relating to endangered species; to the Committee on Environment and Public Works.

POM-399. A resolution adopted by the Western Association of Fish and Wildlife Agencies relating commercial trafficking of wildlife parts; to the Committee on Environment and Public Works.

POM-400. A resolution adopted by the Western Association of Fish and Wildlife Agencies relating to burning toxic substances at sea; to the Committee on Environment and Public Works.

POM-401. A resolution adopted by the Western Association of Fish and Wildlife Agencies supporting the Wallop-Breaux Act (Public Law 98-269); to the Committee on Finance..

POM-402. A resolution adopted by the Western Association of Fish and Wildlife Agencies relating to the redefinition of "Sports Fish" as used in the Federal Aid in Sports Fish Restoration (Dingell-Johnson/Wallop-Breaux) Program to the Committee on Finance.

POM-403. A resolution adopted by the House of Representatives of the State of Oklahoma; to the Committee on Finance.

"HOUSE RESOLUTION NO. 1031

"Whereas, the petroleum industry is a vital part of this nation's economy; and

"Whereas, fluctuation in the price of petroleum due to worldwide production and market conditions can place the petroleum industry in and unstable position which, in turn, can have a very negative effect on this country's financial status; and

"Whereas, it would be catastrophic for this nation's petroleum producers if the international price of oil and other petroleum products should drop from the current level; and

"Whereas, some type of emergency safeguard to prevent the dire consequences which result from a decrease in the international price of petroleum products should be implemented; and

"Whereas, a proposal has been made by Senator David Boren that an import fee be placed on foreign oil and refined petroleum products imported into the United States; and

"Whereas, imposing such a fee if the international price of oil and other petroleum products declines would ensure that the petroleum industry in this country would not suffer economic disaster.

"Now, therefore, be it resolved by the House of Representatives of the 1st session of the 40th Oklahoma Legislature:

"That the Oklahoma House of Representatives does hereby memorialize the Congress of the United States to enact an import fee on foreign oil and refined petroleum products to be implemented if the international price of these products declines below current levels.

"That copies of this resolution be dispatched to the President of the United States, the President Pro Tempore of the United States Senate, the Speaker of the United States House of Representatives, and members of the Oklahoma Congressional Delegation."

POM-404. A resolution adopted by the South Carolina Forestry Commission relating to the retention of capital gains treatment of timber, current treatment of various timber management expenditures, and reforestation investment credit and amortization; to the Committee on Finance.

POM-405. A resolution adopted by the Senate of the State of Alaska; to the Committee on Foreign Relations.

"SENATE RESOLVE NO. 3

"Whereas the Interim Convention on Conservation of North Pacific Fur Seals between the United States, Japan, Canada, and the U.S.S.R. is now before the United States Senate for ratification; and

"Whereas, since the fur seal treaty has been in effect, the fur seal population has increased from 300,000 in 1911 to well over 1.2 million; and

"Whereas the fur seal treaty, the fur seal harvest, and the welfare of the Pribilof Aleut people are inextricably tied together in very complex ways, both culturally and economically; and

"Whereas the fur seal harvest on the Pribilof Islands has been taking place since the late 1700's; and

"Whereas the fur seal harvest remains the main source of income for the residents of the Pribilof Islands while efforts are made to diversify the local economy; and

"Whereas the fur seal harvest is no longer subsidized by the federal government and will be conducted privately on a self-supporting basis; and

"Whereas reputable scientists agree the fur seals are not an endangered species; and

"Whereas the treaty provides for a carefully studied, scientifically controlled harvest of two-year old subadult nonbreeding males only; and

"Whereas there is no scientific evidence to indicate the current level of the commercial harvest of subadult male seals contributes to any decline in the fur seal population, but to the contrary, evidence suggests that culling subadult males contributes to the overall health of the fur seal herd; and

"Whereas cooperative and strengthened research, education, management and enforcement programs are the keys to the conservation of the North Pacific fur seal and these activities can best be carried out through the fur seal treaty; and

"Whereas the National Audubon Society, a respected conservation organization with more than a half-million members, has endorsed the renewal of the fur seal treaty; and

"Whereas a national campaign, featuring misleading and inaccurate information, has been launched by various wildlife groups to convince the United States Senate to reject the treaty; and

"Whereas a hearing before the Foreign Relations Committee will afford the representatives of the Pribilof Islands an opportunity to refute the misleading charges made by the treaty opponents, and to present, under oath, substantiated, scientific information in support of the continuation of the fur seal treaty; and

"Whereas not to provide for a fair hearing on this issue would be disastrous for the

Aleut people and would open the way for special interest groups to attack other essential subsistence activities, such as trapping, whaling, and fishing;

"Be it resolved by the Senate that the United States Senate Committee on Foreign Relations is respectfully requested to hold prompt hearings on the Interim Convention on Conservation of North Pacific Fur Seals; and be it

"Further resolved that the United States Senate is respectfully requested to ratify the Interim Convention on Conservation of North Pacific Fur Seals.

"Copies of this resolution shall be sent to the Honorable George Bush, Vice-President of the United States and President of the U.S. Senate; to the Honorable Robert Dole, Majority Leader of the Senate; to the Honorable Richard G. Lugar, Chairman of the Senate Committee on Foreign Relations; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, members of the Alaska delegation in Congress."

POM-406. A resolution adopted by the Western Association of Fish and Wildlife Agencies relating to the Fair Labor Standards Act; to the Committee on Labor and Human Resources.

POM-407. A resolution adopted by the Pennsylvania State Veterans' Commission condemning the efforts to erect a monument honoring anti-Vietnam war protestors; to the Committee on Veterans' Affairs.

POM-408. A resolution adopted by the General Court of the Commonwealth of Massachusetts; to the Committee on Veterans' Affairs.

"RESOLUTIONS MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO AMEND THE VETERANS EDUCATIONAL ASSISTANCE ACT OF 1984

"Whereas, the recently enacted Veterans Educational Assistance Act of 1984 does not provide for practical on-the-job training, and since 1944 literally hundreds of thousands of Massachusetts veterans have received some form of training under the 'G.I. bills'; and

"Whereas, historically, practical on-the-job training is accepted as the most successful method of preparing quality job recipients and many areas of skill and training are not available in educational institutions; and

"Whereas, some employers require a satisfactory period of on-the-job training and a high percentage of high school graduates do not desire on have aptitude for college; and

"Whereas, the cost of apprenticeship training has historically cost the government less and benefits accruing to American business and industry have been substantial; and

"Whereas, the need is present as pointed out by enactment of the Emergency Veterans Job Training Act of 1983; and

"Whereas, the interests of all those not desiring institutional education would best be served; therefore be it

"*Resolved*, that the Massachusetts House of Representatives hereby urges the Congress of the United States of America to amend the Veterans Educational Assistance Act of 1984 to include apprenticeship and on-the-job training programs; and be it further

"*Resolved*, that a copy of these resolutions be forwarded by the Clerk of the House of Representatives to the President of the United States, the presiding officer of each branch of the Congress, and the Members thereof from this Commonwealth."

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. THURMOND, from the Committee on the Judiciary:

Richard Kennon Willard, of Virginia, to be an Assistant Attorney General.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. GRASSLEY:

S. 1640. A bill to amend title XVIII of the Social Security Act to provide for coverage under the Medicare program of services performed by a physician assistant; to the Committee on Finance.

By Mr. WALLOP (by request):

S. 1641. A bill to extend various health research authorities, and for other purposes; to the Committee on Labor and Human Resources.

S. 1642. A bill to amend Health Maintenance Organization authorities; to the Committee on Labor and Human Resources.

S. 1643. A bill to extend various health services authorities, and for other purposes; to the Committee on Labor and Human Resources.

S. 1644. A bill to amend various health professional training authorities, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. STEVENS (for himself, Mr. MURKOWSKI, Mr. ABDNOR, Mrs. HAWKINS, Mr. D'AMATO, Mr. DURENBERGER, and Mr. ROTH):

S. 1645. A bill to delay a postal rate increase for subscription publications; to the Committee on Governmental Affairs.

By Mr. LEVIN:

S. 1646. A bill to amend chapter 34 of title 38, United States Code, to authorize the Administrator of Veterans' Affairs to afford educational assistance under such chapter to certain eligible veterans after the expiration of the 10-year delimiting period; to the Committee on Veterans' Affairs.

By Mr. LAUTENBERG (for himself and Mr. ROTH):

S. 1647. A bill to amend the Tariff Act of 1930 to enhance the protection of intellectual property rights; to the Committee on Finance.

By Mr. MURKOWSKI:

S.J. Res. 199. Joint resolution to designate the month of November 1985 as "National Elks Veterans Rememberance Month"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. ABDNOR:

S. Con. Res. 64. Concurrent resolution expressing the sense of the Congress that the President should form a National Commission on the Farm Credit System to make recommendations to the Congress; to the Committee on Governmental Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRASSLEY:

S. 1640. A bill to amend title XVIII of the Social Security Act to provide for coverage under the Medicare Program of services performed by a physician assistant; to the Committee on Finance.

MEDICARE COVERAGE OF PHYSICIAN ASSISTANT SERVICES

● Mr. GRASSLEY. Mr. President, I am introducing legislation today which will clarify and expand coverage of physician assistant services under the Medicare Part B Program. This piece of legislation will increase access to health care for Medicare beneficiaries without increasing the cost of the Medicare Program.

As my colleagues are aware, physician assistants services are covered under part B of Medicare when PA's render their service in a certified rural health clinic. Reimbursement to the employing clinic was authorized in 1977 by the Rural Health Clinic Services Act, Public Law 95-210. The Medicare Program also covers physician assistant services when provided in health maintenance organizations [HMO's]. Unfortunately, physician assistant services rendered in other settings to Medicare beneficiaries are not covered under part B.

In addition to the problems this creates for Medicare beneficiaries, the Federal Government is failing to reap the full benefit of the health manpower training programs by not covering physician assistant services under Medicare.

For instance, on July 19, the Senate unanimously passed the health manpower amendments of 1985. Included in this bill was an authorization to spend approximately $14 million over the next 3 years on physician assistant training programs, a worthwhile expenditure and one which I supported.

But due to the inconsistency in Federal policy, we are helping to educate health care professionals whose services are of no benefit to millions of Medicare beneficiaries. My legislation seeks to eliminate this problem by providing for the coverage of physician assistant services under part B of Medicare.

Because the States have the responsibility for determining the scope of practice for physician assistants within that State, my bill would cover only physician assistant services to the extent allowable under State law. In other words, my legislation would not usurp State authority to regulate the activities of physician assistants.

I also want to point out, Mr. President, that there is a significant difference between my bill and other pieces of legislation promoted by other health professionals. Specifically, my bill would not create a new provider

because reimbursement would be to the employing physician and not to the physician assistant. As my colleagues are aware, physician assistants are dependent health care practitioners who only practice under the direction and supervision of a physician. My bill maintains that supervisory relationship.

Furthermore, my bill calls for reimbursement for physician assistant services at a rate slightly lower than the reimbursement rate which would have been paid had the physician rendered the services. Because of the slighty lower reimbursement rate, the Congressional Budget Office has determined that the effect of the bill is revenue neutral.

The increased access and the resultant increased cost to Medicare are offset by the lower reimbursement rate of my bill. I want to make it clear that I do not consider physician assistant services to be of lesser value than physician services. However, I recognize that in today's budget climate, it is impossible to recommend legislation that would increase Medicare costs and expect it to be seriously considered.

For the benefit of my colleagues, I ask unanimous consent that a letter from the Congressional Budget Office to Congressman WYDEN regarding the budgetary impact of this legislation be included in the RECORD at the end of my statement. I also ask unanimous consent to insert a copy of an article from the Waterloo Courier on how current Medicare laws hamper the utilization of physician assistant services in rural Iowa.

Mr. President, physician assistants are highly educated, cost-effective members of the health care team. Their role in ensuring quality health care at affordable prices has been clearly demonstrated. Congress acted wisely in expanding the Medicare Program to cover physician assistant services performed in rural health clinics and health maintenance organizations. I trust my colleagues will join me in continuing that process by covering physician assistant services in other settings as well. My bill should serve to increase access of Medicare beneficiaries to quality health care, particularly in highly rural areas where shortages of physicians may exist.

I also wish to thank my distinguished colleague, Congressman RON WYDEN, for introducing identical legislation in the House of Representatives.

I ask unanimous consent that a copy of my bill, and the two documents mentioned earlier, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1640

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

(a) SERVICES COVERED.—Section 1861(s)(2) of the Social Security Act is amended—

(1) by striking out "and" at the end of subparagraph (H);

(2) by adding "and" at the end of subparagraph (I); and

(3) by adding at the end thereof the following new subparagraph:

"(J)(i) services furnished by a physician assistant (as defined in subsection (aa)(3)) which such physician assistant is legally authorized to perform under the State law or State regulatory mechanism of the State in which the services are performed, if such physician assistant is under the supervision of a physician described in subsection (r)(1), and

"(ii) services and supplies furnished as an incident to the services described in clause (i) which would be covered under subparagraph (A) if furnished by a physician or incident to a physician's professional service;".

(b) PAYMENT AMOUNT.—Section 1833(a)(1) of such Act is amended by striking out "and" before "(F)" and by adding at the end thereof the following: "and (G) with respect to services described in section 1861(s)(2)(J), the amounts paid shall be equal to 90 percent of the amounts which would otherwise be paid if such services were furnished by the physician under whose supervision the physician assistant furnishes such services.".

(c) PAYMENT TO BE MADE TO EMPLOYER.—The first sentence of section 1842(b)(6) of such Act is amended—

(1) by striking out "except that payment may be made (A)(i)" and inserting in lieu thereof "except that (A) payment may be made (i)";

(2) by striking out "or (B)" and inserting in lieu thereof "(B) payment may be made"; and

(3) by inserting before the period the following: ", and (C) payment shall be made to the employer of the physician assistant in the case of services described in section 1861(s)(2)(J)".

(d) EFFECTIVE DATE.—The amendments made by this Act shall apply to services furnished in or after the fourth month which begins after the date of the enactment of this Act.

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC, November 5, 1984.

Hon. RON WYDEN,
U.S. House of Representatives,
Washington, DC.

DEAR CONGRESSMAN: In response to your letter of February 17, 1984, we have examined the costs of your draft legislation to extend Medicare coverage to physician assistants working in private practice settings. Under current law Medicare does not reimburse for services performed by a physician assistant (PA) if those services are normally performed by a physician. Under this proposal, PA services could be reimbursed at up to 90 percent of that allowed for the billing physician. In addition, the physician would be required to accept assignment for physician assistant charges.

Based on our review of your draft legislation, it is expected that no significant cost or saving to the government would be incurred as a result of enactment of this legislation. Although encouraging the use of PAs in the treatment of Medicare beneficiaries could foster competition and lead to lower prices in the long run, we expect the magnitude of those changes would be small during this decade. Our findings are based on the following considerations.

By definition, philosophy and state laws, PAs practice only under the supervision of a licensed physician. The proposed change does not encourage, or even allow, PAs to practice independently of physicians. In fact, under the proposed legislation PAs would continue to be employed by, supervised by, and billed under the practice of a licensed physician.

Medicare beneficiaries may prefer treatment from MDs rather than from PAs. Furthermore, the Medicare patient has only a small incentive to seek treatment from the lower priced PA. At the margin the patient pays a coinsurance of only 20 percent. For example, reduction in the charge for an office visit from $30.00 to $27.00 is a savings of only 60 cents to the Medicare patient, and this small difference frequently is paid by Medicaid or private Medi-Gap policies. Therefore, the proposed legislation is unlikely to create new demands by Medicare beneficiaries for PAs.

Many physicians may not enjoy practice styles that involve considerably less patient contact and considerably more personnel management. Therefore, physicians may demand and receive higher salaries for managing practices that involve the use of PAs. Physicians are unlikely to make major changes in their practice styles in response to changes in reimbursement that affect only the use of PAs for their Medicare patients.

Physicians currently employ PAs in their practices even though most private and public insurers do not allow separate billing for PAs.

There are fewer than 10,000 PAs in practice. Even if their use with Medicare patients is encouraged slightly by a change in payment practices, many additional PAs must be trained and licensed before their numbers can have a significant impact on Medicare outlays.

We would be pleased to respond to any questions you might have on this estimate. Your staff may contact Jack Rodgers (226-2820) with detailed questions.

Sincerely,

RUDOLPH G. PENNER,
Director.

[From the Waterloo Courier, June 30, 1985]

MEDICARE RULES, FEWER PATIENTS FORCE CLINIC TO PHASE OUT PHYSICIAN'S ASSISTANTS

(By Yvonne Beeler)

WEST UNION.—The first area medical clinic to incorporate physician's assistants into its daily medical practice has become the first clinic to eliminate them.

Barriers imposed by Medicare regulations and decreased patient flow have forced the West Union Medical Clinic to phase out two PAs employed at its facilities for eight years. One PA will leave Monday and the second will work until new employment is found.

"Regulations within Medicare are too restrictive for our family-type setting," according to Dr. David Freed, head of the West Union clinic.

Medicare will not reimburse a PA who has administered medical services to a Medicare patient. Additionally, Medicare requires a physician to have direct supervision over a PA.

"We were having two people seeing one patient, when only one was necessary," Freed noted.

Dr. Dennis Oliver, director of the PA training program at the University of Iowa, Iowa City, agrees with Freed in that Medicare payments have put a "damper" on the PA program since its inception.

Still, Oliver said there has been a yearly increase in the number of PA graduates, with 35 to 40 now graduating annually. About 215 are currently employed in Iowa.

West Union was the first community in Northeast Iowa to take advantage of the PA program. The PAs were hired eight years ago to help alleviate the patient load on physicians at the clinic.

But the patient flow has switched in recent years, and is now declining. Coupled with the Medicare barrier, Freed said the clinic was forced to make an economic decision and phase out the PAs. The clinic will still employ a PA at the Fayette satellite office because a "steady need" exists there.

The practice of employing physician's assistants began in the early 1970s as a means to provide medical services in rural Iowa, where communities were unable to recruit resident physicians.

PAs are not licensed doctors, but may perform routine medical tasks, including physicals and examinations. PAs cannot prescribe drugs, perform surgery or other medical services reserved for physicians.

West Union appears to be the only clinic in the area to eliminate its PAs. Oliver said he is not aware of other clinics following suit.

Between one and five PAs are now working in each of 11 area counties—Buchanan, Benton, Tama, Grundy, Butler, Bremer, Chickasaw, Franklin, Hardin, Howard and Mitchell. Between six and 10 PAs are employed in Fayette and Black Hawk counties. There are no PAs employed in Floyd or Winneshiek counties, Oliver reported.

Initially, PAs were finding jobs throughout rural Iowas. PAs are now moving into the metro hospitals, away from the smaller communities and rural health clinics.

"Most obvious, the convenience of medical service is no longer available (when a PA leaves)," Oliver said, referring to the shift in employment locations. "Less (medical) care is provided now with no PAs in the rural areas. Small towns are at a disadvantage because people must travel to a doctor, in spite of weather of other hinderances."

He noted the Medicare regulations have also contributed to the move of PAs into larger hospitals. Oliver said it seems more Medicare patients reside in smaller towns than in larger communities.

From the start, Medicare has always required that a doctor have direct supervision over all employees.

"This doesn't mean the physician must be standing over an employee's shoulder, just be readily available," according to Phil Chiuarelli, of the Health Care Financing Administration in Kansas City, which administers Medicare and Medicaid payments.

Despite the loss of the PAs, Freed is attempting to expand the number of offices operated by the West Union clinic. A satellite clinic in Calmar is scheduled to open this fall, with a doctor being recruited for that site.

"We'll definitely miss our PAs," Freed said. "They've been a big help to us and they leave highly recommended."●

By Mr. WALLOP (by request):

S. 1641. A bill to extend various health research authorities, and for other purposes; to the Committee on Labor and Human Resources.

S. 1642. A bill to amend Health Maintenance Organization authorities; to the Committee on Labor and Human Resources.

S. 1643. A bill to extend various health services authorities, and for other purposes; to the Committee on Labor and Human Resources.

S. 1644. A bill to amend various health professions training authorities, and for other purposes; to the Committee on Labor and Human Resources.

HEALTH CARE LEGISLATION

Mr. WALLOP. Mr. President, today I am introducing a package of health care bills on behalf of Health and Human Services Secretary Heckler and the Reagan administration.

The Health Research Amendments of 1985, the Health Maintenance Amendments of 1985, the Health Services Amendments of 1985, and the Health Professions Amendments of 1985, represent an ongoing effort by the administration to provide a streamlined and cost-effective Federal involvement in national health care policy.

In July of this year, Secretary Heckler announced that the Nation's health spending increased at the slowest rate in 20 years during 1984, with the rate of growth dipping below double digits for the first time since 1965. Total health spending in 1984 was $387 billion, up 9.1 percent from 1983. The increase compares with spending growth of 10.6 percent in 1983 and 15.3 percent in 1980, the highest single-year increase. In addition, Secretary Heckler said, the total spending amount for 1984 represents 10.6 percent of gross national product, down from 10.7 percent in the previous year and the first decrease in health spending as a percentage of GNP since 1978. These bills are the fruits of the administration's procompetitive health policies. This legislation seeks to aim the Federal role in the direction which will continue these accomplishments.

The Health Maintenance Amendments of 1985 would eliminate Federal support for HMO's in an orderly fashion by repealing the authorities for Federal financial support for HMO's. In addition, this measure would eliminate, as of October of 1987, the requirement that each employer offer employees the choice of enrollment in an HMO if the employer offered other health benefits plans to the employees.

The HMO legislation was passed to encourage the development of HMO's both through marketing leverage and financial support. Since enactment of the act in 1973, the industry has grown dramatically. There were 72 plans with 3.5 million members when the act was passed. As of June 1984, the number of HMO's had grown to 311 with 15.2 million members. HMO's are now accepted in many areas as a cost effective means of delivering health care. It is, therefore, the administration's belief that there is little justification for continued Federal intervention in this market.

The Health Professions Amendments of 1985 would authorize the Secretary of Health and Human Services to insure loans under the Health Education Assistance Loans Programs through fiscal 1988. The bill would also enact a number of proposals designed to assist the Department of Health and Human Services in carrying out its health professions training responsibilities as effectively and efficiently as possible. In addition, the bill would eliminate health professions training categorical program authorities, including nursing authorities.

The Health Services Amendments of 1985 consolidates into a single block grant the Community Health Centers and Primary Care, Black Lung Clinics, Family Planning Services, and Migrant Health Services primary care programs. In addition, the measure reauthorizes the Adolescent Family Life Program, repeals the Health Planning authorities, reauthorizes the National Health Service Corps Field Program, and makes a number of other amendments to improve the efficiency of the health services programs.

The Health Research Amendments of 1985 would authorize appropriations for fiscal years 1986 through 1988 for National Research Service Awards and for assistance to medical libraries. The bill legislates only where legislation is needed. The NRSA's and aid to libraries are the only activities of the National Institutes of Health for which funds cannot be appropriated under the broad research mandate of section 301 of the Public Health Service Act. The bill would also enact a number of proposals designed to assist the Department of Health and Human Services in carrying out its health research responsibilities as effectively and efficiently as possible. The administration intends to seek appropriations for cancer, cardiovascular, lung, blood, and other health research activities based on the general research authority in section 301 of the Public Health Services Act.

Mr. President, I wish to commend Secretary Heckler and the administration for their efforts in controlling health care costs and for streamlining the Federal Government's involvement in the health care delivery system. While I support the general approach taken by the administration in those respective bills, each of the policy and program changes that are made do not necessarily reflect my

personal views or the position which I feel are in the best interests of my constituents in the State of Wyoming. I introduce this legislative package so that the administration's proposals in the area of public health can be made part of the debate on funding levels and programmatic structure.

I would ask unanimous consent that the administration's legislative package be printed in the RECORD following my statement.

There being no objection, the package was ordered to be printed in the RECORD as follows:

S.1641

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND REFERENCES IN ACT

SECTION 1. (a) This Act may be cited as the "Health Research Amendments of 1985".

(b) The amendments in this Act apply to the Public Health Service Act, unless otherwise specifically stated.

REPEAL OF REQUIREMENT FOR ONGOING STUDY OF THE HEALTH COSTS OF POLLUTION

SEC. 2. Section 304(d) (42 U.S.C. 242b(d)) is repealed.

AUTHORITY FOR CLINICAL RESEARCH TO EVALUATE THE EFFICACY OF MEDICAL PROCEDURES THROUGH THE NATIONAL CENTER FOR HEALTH SERVICES RESEARCH AND HEALTH CARE TECHNOLOGY ASSESSMENT

SEC. 3. The last sentence of section 305(b) (42 U.S.C. 242c(b)) is amended by striking out "or clinical research that is directly and principally designed to evaluate the efficacy of any therapeutic, diagnostic, or preventive health measure".

ELIMINATION OF REQUIREMENT FOR SUPPORT OF HEALTH SERVICES RESEARCH CENTERS

SEC. 4. Section 305 (42 U.S.C. 242c) is amended—

(1) by striking out subsection (d), and

(2) by redesignating subsections (e) through (i) as (d) through (h).

REPEAL OF REQUIREMENTS FOR DATA COLLECTION ON THE EFFECTS OF THE ENVIRONMENT ON HEALTH

SEC. 5. Section 306(l) (42 U.S.C. 242k(l)) is repealed.

APPROPRIATION AUTHORIZATIONS FOR ASSISTANCE TO MEDICAL LIBRARIES

SEC. 6. Section 390(c) (42 U.S.C. 280b(c)) is amended—

(1) by striking out "and" after "1981,", and

(2) by inserting ", $7,800,000 for the fiscal year ending September 30, 1986, $8,100,000 for the fiscal year ending September 30, 1987, and $8,300,000 for the fiscal year ending September 30, 1988" before the period.

REPEAL OF NATIONAL CANCER INSTITUTE BUDGET BYPASS PROVISION

SEC. 7. Section 404(a)(8) (42 U.S.C. 285(a)(8)) is amended—

(1) by striking out subparagraph (A), and

(2) by striking out the subparagraph designation "(B)".

INCREASED LIMIT ON CANCER AND HEART, LUNG, AND BLOOD GRANTS WITHOUT ADVISORY BOARD OR COUNCIL APPROVAL

SEC. 8. Sections 405(b) (42 U.S.C. 286(b)) and 419A(c) (42 U.S.C. 287h(c)) are each amended by striking out "$35,000" each place it occurs and inserting instead "$50,000".

LONGER SUPPORT PERIOD FOR NATIONAL CANCER RESEARCH AND DEMONSTRATION CENTERS

SEC. 9. The last sentence of section 406(b) (42 U.S.C. 286a(b)) is amended by striking out "three" each place it occurs and inserting instead "five".

ELIMINATION OF TASK FORCE ON ENVIRONMENTAL CANCER AND HEART AND LUNG DISEASE

SEC. 10. Section 402 of the Clean Air Act Amendments of 1977 (42 U.S.C. 4362) and section 9 of the Health Services Research, Health Statistics, and Health Care Technology Act of 1978 (42 U.S.C. 4362a) are each repealed.

REPEAL OF REQUIREMENT FOR SUPPORT OF AT LEAST TEN SICKLE CELL DISEASE CENTERS

SEC. 11. Section 8(w) of the Orphan Drug Act (42 U.S.C. 287i nt.) is repealed.

CHANGES IN CERTAIN TITLES OF OFFICIALS AND A SUBCOMMITTEE OF THE NATIONAL INSTITUTE OF ARTHRITIS, DIABETES, AND DIGESTIVE AND KIDNEY DISEASES

SEC. 12. (a)(1) The matter in section 434(b) (42 U.S.C. 289c-1(b)) preceding paragraph (1) is amended to read as follows:

"(b) In the National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases (hereinafter referred to in this section as the 'Institute') there shall be a Director, Division of Arthritis and Musculoskeletal and Skin Diseases, a Director, Division of Diabetes, Endocrinology, and Metabolic Diseases, a Director, Division of Digestive Diseases and Nutrition, and a Director, Division of Kidney, Urologic, and Hematologic Diseases, who, under the supervision of the Director of the Institute, shall be responsible for—".

(2) Section 434(b) (42 U.S.C. 289c-1(b)) is further amended by striking out "Associate" each place it occurs and inserting instead "Division".

(b) Section 434(c) (42 U.S.C. 289c-1(c)) is amended—

(1) in the first sentence, by inserting "and nutrition" after "digestive diseases",

(2) in the second sentence, by inserting "or in the fields" after "diseases", and

(3) in the third sentence, by inserting "or to the fields" after "diseases".

(c) The matter in section 434(d) (42 U.S.C. 289c-1(d)) preceding paragraph (1) is amended to read as follows:

"(d) The Director of the Institute, acting through the Director, Division of Arthritis and Musculoskeletal and Skin Diseases, the Director, Division of Diabetes, Endocrinology, and Metabolic Diseases, the Director, Division of Digestive Diseases and Nutrition, and the Director, Division of Kidney, Urologic, and Hematologic Diseases, shall—".

(d) Section 435(c)(1) (42 U.S.C. 289c-2(c)(1)) is amended by striking out "Associate Director for" and inserting instead "Director, Division of".

(e) The first sentence of section 436(b) (42 U.S.C. 289c-3(b)) and the first sentence of section 437(b)(2) (42 U.S.C. 289c-4(b)(2)) are each amended by striking out "Associate" and inserting instead "Division".

LIMITATION ON REQUIRED COORDINATION BY DIVISION DIRECTORS OF THE NATIONAL INSTITUTE OF ARTHRITIS, DIABETES, AND DIGESTIVE AND KIDNEY DISEASES

SEC. 13. Section 434(b)(1) (42 U.S.C. 289c-1(b)(1)) (as amended by section 12(a)(2) of this Act) is further amended by striking out "the diseases for which the positions of the Division Directors were created" and inserting instead "arthritis, diabetes, and digestive and kidney diseases".

EXTENSION OF DIABETES, ARTHRITIS, AND DIGESTIVE DISEASES ADVISORY BOARDS

SEC. 14. Section 437(l) (42 U.S.C. 289c-4(l)) is amended by striking out "1983" and inserting instead "1988".

APPROPRIATION AUTHORIZATIONS FOR NATIONAL RESEARCH SERVICE AWARDS

SEC. 15. The first sentence of section 472(d) (42 U.S.C. 289l-1(d)) is amended—

(1) by striking out "and" after "1982,", and

(2) by inserting ", $239,000,000 for the fiscal year ending September 30, 1986, $248,400,000 for the fiscal year ending September 30, 1987, and $257,600,000 for the fiscal year ending September 30, 1988" before the period.

EXEMPTION OF CERTAIN CLINICAL TRIAL DATA FROM DISCLOSURE

SEC. 16. Title IV is amended by adding after section 479 the following section:

"EXEMPTION OF CERTAIN CLINICAL TRIAL DATA FROM DISCLOSURE

"SEC. 480. (a) The Secretary may exempt from disclosure under section 552 of title 5, United States Code, data from a clinical trial conducted or supported by the Secretary if the Secretary determines that—

"(1) observations are still to be collected, recorded, or verified as part of the clinical trial,

"(2) the need for confidentiality of the data has been explicitly stated in an experimental protocol approved by an Institutional Review Board meeting the requirements under section 474,

"(3) the participants in the trial have been informed that an exemption will be sought under which data from the clinical trial will be kept confidential until all observations that are part of the clinical trial have been collected, recorded, and verified, and the participants have agreed to take part in the clinical trial under these conditions,

"(4) there are adequate procedures for analyzing interim data and monitoring safety to provide sufficient protection to the participants in the clinical trial, and

"(5) disclosure would jeopardize the conduct of the clinical trial.

"(b) For purposes of subsection (a), a 'clinical trial' means a study under which a drug or other health intervention is prospectively evaluated by utilizing human participants.".

FEDERAL FUNDING FOR TELEPHONE DATA SERVICE IN PRIVATE HOMES CONNECTED TO COMPUTER CENTERS

SEC. 17. Section 1348 of title 31, United States Code, is amended by adding at the end the following:

"(e) Appropriations are available to install telephones in private residences or for tolls or other charges for telephone service from private residences for dedicated data lines communicating with Government or Government supported computer centers.".

ELIMINATION OF UNNECESSARY REPORTS

SEC. 18. (a) Section 308(a) (42 U.S.C. 242m(a)) is amended—

(1) by striking out paragraph (1),

(2) in paragraph (3), by striking out "or (2)", and

(3) by renumbering paragraphs (2) and (3) as (1) and (2), respectively.

(b) Section 1122 (42 U.S.C. 300c-12) is amended to read as follows:

"SUDDEN INFANT DEATH SYNDROME RESEARCH

"SEC. 1122. From the sums appropriated to the National Institute of Child Health and Human Development under section 441, the Secretary shall assure that there are applied to research which relates specifically to sudden infant death syndrome, and to research which relates generally to sudden infant death syndrome, including high-risk pregnancy and high-risk infancy research which directly relates to sudden infant death syndrome, such amounts each year as will be adequate, given the leads and findings then available from such research, in order to make maximum feasible progress toward identification of infants at risk of sudden infant death syndrome and prevention of sudden infant death syndrome.".

(c) Section 27(c) of the Toxic Substances Control Act (15 U.S.C. 2626(c)) is repealed.

(d) Section 154(e) of the Clean Air Act (42 U.S.C. 7454(e)) is amended by striking out the last sentence.

(e) Section 1200 of the Comprehensive Drug Abuse Prevention and Control Act of 1980 (42 U.S.C. 3509) is repealed.

MODIFICATION OF REQUIREMENTS FOR REPORTS

SEC. 19. (a) Section 301(b)(4) (42 U.S.C. 241(b)(4)) is amended—

(1) in the matter preceding subparagraph (A), by striking out "an annual" and inserting instead "a biennial", and

(2) in subparagraph (D), by striking out "year" and inserting instead "period".

(b) Section 404(a)(9) (42 U.S.C. 285(a)(9)) is amended by striking out ", not later than November 30 of each year,".

(c) Section 434(e) (42 U.S.C. 289c-1(e)) is amended—

(1) in the first sentence, by striking out ", as soon as practicable, but not later than sixty days, after the end of each fiscal year,",

(2) in the first sentence, by striking out "an annual" and inserting instead "a biennial" and

(3) in the matter in the last sentence preceding paragraph (1), by striking out "annual" and inserting instead "biennial".

(d) Section 435(b) (42 U.S.C. 289c-2(b)) is amended by striking out "an annual" and inserting instead "a biennial" and by striking out "(on or before November 30 of each year)".

(e) Section 439(e) (42 U.S.C. 289c-6(e)) is amended by striking out "an annual" and inserting instead "a biennial" and by striking out "on or before November 30 of each year".

(f) Section 22(f) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 671(f) is amended—

(1) by inserting "biennially" after "submit", and

(2) by striking out "an annual report" and inserting instead "a report".

(g) Section 26 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 675) is amended by striking out "Within one hundred and twenty days following the convening of each regular session of each Congress, the Secretary and the Secretary of Health, Education, and Welfare shall each" and inserting instead "The Secretary and the Secretary of Health and Human Services shall each biennially".

(h) Section 5(h) of the International Health Research Act of 1970 (22 U.S.C. 2103(h)) is amended by striking out "regular session" and inserting instead "Congress".

APPLICABILITY OF FEDERAL ASSISTANCE FINANCING SYSTEM TO ADDITIONAL FORMS OF FINANCIAL ASSISTANCE AND CONTRACTS

SEC. 20. Section 6 of the Mental Retardation Facilities and Community Mental Health Centers Construction Act Amendments of 1965 (42 U.S.C. 3514) is amended—

(1) by striking out "grant" the first place it occurs and inserting instead "grant, other form of financial assistance, or contract",

(2) by striking out "grant" every other place it occurs and inserting instead "award",

(3) by striking out "grantee" each place it occurs and inserting instead "recipient",

(4) by striking out "Secretary of Health, Education, and Welfare" and inserting instead "Secretary of Health and Human Services, and

(5) by striking out "Department of Health, Education, and Welfare" and inserting instead "Department of Health and Human Services".

TECHNICAL AMENDMENTS

SEC. 21. (a) Sections 407(b)(4) (42 U.S.C. 286b(b)(4)) and 418(a)(6) (42 U.S.C. 287g(a)(6)) and the first sentence of section 419A(b) (42 U.S.C. 287h(b)) are each amended by striking out "501" and inserting instead "2101".

(b)(1) Section 472(a)(1)(B) (42 U.S.C. 2891-1(a)(1)(B)) is amended by striking out "and the research described in subparagraph (A)(vi)".

(2) Section 472(b)(1)(C) (42 U.S.C. 2891-1(b)(1)(C)) is amended by inserting "or (a)(1)(A)(iv)" after "(a)(1)(A)(iii)".

(c) Section 1202 (42 U.S.C. 300d-1) is amended by striking out "1205" and inserting instead "1201".

(d) Section 2(b)(2) of the Alcohol and Drug Abuse Amendments of 1983 is amended—

(1) in the matter preceding subparagraph (A), by striking out "Section 210" and inserting instead "Section 210", and

(2) by adding "and" at the end of subparagraph (C).

S. 1642

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND REFERENCES IN ACT

SECTION 1. (a) This Act may be cited as the "Health Maintenance Organization Amendments of 1985".

(b) The amendments in this Act apply to the Public Health Service Act, unless otherwise specifically stated.

REPEAL OF AUTHORITIES FOR GRANTS, CONTRACTS, LOANS, AND LOAN GUARANTEES

SEC. 2. (a) Sections 1303, 1304, 1305, 1305A, 1306, 1309, 1313, 1315, and 1317 (42 U.S.C. 300e-2, 300e-3, 300-4, 300e-4a, 300e-5, 300e-8, 300e-12, 30e-14, and 300e-16) are repealed.

(b) Section 1307(b) (42 U.S.C. 300e-6(b)) is amended by striking out the second sentence.

(c) Section 1307(c) (42 U.S.C. 300e-6(c)) is repealed.

(d) Section 1307(d) (42 U.S.C. 300e-6(d)) is amended by striking out "for purposes of receiving assistance under this title" each place it occurs.

(e) Section 1308(a) (42 U.S.C. 300e-7(a)) is amended—

(1) by striking out paragraph (1),

(2) by striking out the paragraph designation "(2)",

(3) in subparagraph (B), by striking out "subparagraph (C)" and "subparagraph (D)" and inserting instead "paragraph (3)" and "paragraph (4)", respectively,

(4) in subparagraph (C), by striking out the clause designations "(i)" and "(ii)" and inserting instead "(A)" and "(B)", respectively, and

(5) by redesignating subparagraphs (A) through (D) as paragraphs (1) through (4).

(f) Section 1308(b) (42 U.S.C. 300e-7(b)) is amended—

(1) by striking out paragraph (1),

(2) in paragraph (2), by striking out the first sentence, and

(3) by renumbering paragraphs (2) and (3) as (1) and (2), respectively.

(g) The first sentence of section 1308(e) (42 U.S.C. 300e-8(e)) is amended by striking out "to make loans under this title and".

ELIMINATION OF DUAL CHOICE REQUIREMENTS

SEC. 3. (a) Sections 1301, 1302, 1307(d), 1310, 1311, 1312, and 1318 (42 U.S.C. 300e, 300e-1, 300e-6(d), 300e-9, 300e-10, 300e-11, and 300e-17) are repealed.

(b) Section 1308(b) (42 U.S.C. 300e-7(b)) (as amended by section 2(f) of this Act) is further amended—

(1) by striking out paragraph (1), and

(2) by striking out the paragraph designation "(2)".

(c) Section 1531(8) (42 U.S.C. 300n(8)) is amended to read as follows:

"(8) The term 'health maintenance organization' means a public or private organization, organized under the laws of any State, which—

"(A) provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physician services, hospitalizations, laboratory, X-ray, emergency and preventive services, and out of area coverage,

"(B) is compensated (except for copayments) for the provision of the basic health care services listed in subparagraph (A) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided, and

"(C) provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organization, or (ii) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).".

(d) Section 8902(l) of title 5, United States Code, is repealed.

(e) Section 1101(a) of the Social Security Act (42 U.S.C. 1301(a)) is amended by striking out paragraph (9).

(f) Section 1124(a)(2)(A) of the Social Security Act (42 U.S.C. 1320a-3(a)(2)(A) is amended by striking out "a health maintenance organization (as defined in section 1301(a) of the Public Health Service Act)" and inserting instead "an eligible organization (as defined in section 1876(b)".

(g) Section 1875(b) of the Social Security Act (42 U.S.C. 1395ll(b)) is amended by striking out "the operation and administration of health maintenance organizations authorized by section 226 of the Social Security Amendments of 1972,".

(h) Section 1876(b) of the Social Security Act (42 U.S.C. 1395mm(b)) is amended by striking out everything after "under the laws of any State," and inserting instead the following: "which meets the following requirements:

"(1) The entity provides to enrolled members at least the following health care services:

"(A) Physicians' services performed by physicians (as defined in section 1861(r)(1)).

"(B) Inpatient hospital services.

"(C) Laboratory, X-ray, emergency, and preventive services.

"(D) Out-of-area coverage.

"(2) The entity is compensated (except for deductibles, coinsurance, and copayments) for the provision of health care services to enrolled members by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health care service actually provided to a member.

"(3) The entity provides physicians' services primarily (A) directly through physicians who are either employees or partners of such organization, or (B) through contracts with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

"(4) The entity assumes full financial risk on a prospective basis for the provision of the health care services listed in paragraph (1), except that such entity may—

"(A) obtain insurance or make other arrangements for the cost of providing to any enrolled member health care services listed in paragraph (1) the aggregate value of which exceeds $5,000 in any year,

"(B) obtain insurance or make other arrangements for the cost of health care services listed in paragraph (1) provided to its enrolled members other than the entity because medical necessity required their provision before they could be secured through the entity,

"(C) obtain insurance or make other arrangements for not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for such fiscal year, and

"(D) make arrangements with physicians or other health professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians or other health professionals or through the institutions.

"(5) The entity has made adequate provision against the risk of insolvency, which provision is satisfactory to the Secretary.

Paragraph (1)(B) shall not apply to an entity which had contracted with a single State agency administering a State plan approved under title XIX for the provision of services (other than inpatient hospital services) to individuals eligible for such services under such State plan on a prepaid risk basis prior to 1970.".

(i) Section 1876(e)(3) of the Social Security Act (42 U.S.C. 1395mm(e)(3)) is amended—

(1) in subparagraph (A), by striking out "section 1302(8) of the Public Health Service act, other than subparagraph (C)" and inserting instead "paragraph (B)",

(2) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

(3) by inserting "(A)" after designating "(3)", and

(4) by adding at the end the following:

"(B)(i) For purposes of paragraph (A), the term 'community rating system' means a system of fixing rates of payments for health services under which rates shall be fixed on a per-person or per-family basis and may vary with the number of persons in a family but, except as authorized in clause (ii), the rates must be equivalent for all individuals and for all families of similar composition.

"(ii) The following differentials in rates of payments may be established:

"(I) Nominal differentials in such rates may be established to reflect differences in marketing costs and the different administrative costs of collecting payments from the following categories of members: Individual members (including their families), small groups of members (as determined under regulations of the Secretary), and large groups of members (as determined under regulations of the Secretary).

"(II) Nominal differences in such rates may be established to reflect the compositing of the rates of payment in a systematic manner to accommodate group purchasing practices of various employers.

"(III) Differentials in such rates may be established for members enrolled pursuant to a contract with a government authority under section 1079 or 1086 of title 10, United States Code, or under any other governmental program (other than the health benefits program authorized by chapter 89 of title 5, United States Code) or any health benefits program for employees of States, political subdivisions of States, and other public entities.".

(j) Section 1876(i)(3)(C) of the Social Security Act (42 U.S.C. 1395mm(i)(3)(C)) is amended to read as follows:

"(C) shall require the organization to protect its members from incurring liability for payment of any fees which are the legal obligation of the organization through—

"(i) a contractual arrangement with any hospital that is regularly used by the members of the organization prohibiting the hospital from holding any such member liable for payment of any fees which are the legal obligation of the organization,

"(ii) insolvency insurance, acceptable to the Secretary,

"(iii) adequate financial reserve, acceptable to the Secretary, or

"(iv) other arrangements, acceptable to the Secretary, to protect members,

except that the above requirement shall not apply if applicable State law provides the members of the organization with protection from liability for payment of any fees which are the legal obligation of the organization; and".

(k) Section 1902(e)(2)(A) of the Social Security Act (42 U.S.C. 1396a(e)(2)(A)) is amended by striking out "a qualified health maintenance organization (as defined in title XIII of the Public Health Service Act)" and inserting instead "an eligible organization (as defined in section 1876(b))".

(l) The first sentence of section 1903(g)(1) of the Social Security Act (42 U.S.C. 1396b(g)(1)) is amended by striking out "a health maintenance organization as defined in section 1876 or which is a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act)" and inserting instead "an eligible organization as defined in section 1876(b)".

(m) Section 1903(m)(1) of the Social Security Act (42 U.S.C. 1396b(m)(1)) is amended—

(1) by striking out subparagraph (B),

(2) by striking out the subparagraph designation "(A)",

(3) by striking out "a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act)" and inserting instead "an eligible organization (as defined in section 1876(b))", and

(4) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively.

(n) Section 1903(m)(2) of the Social Security Act (42 U.S.C. 1396b(m)(2)) is amended—

(1) in subparagraph (E)(ii), by striking out "a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act)" and inserting instead "an eligible organization (as defined in section 1876(b))",

(2) in subparagraph (E)(iv), by striking out "designated as medically underserved under section 1302(7)" and inserting instead "that was designated as medically underserved under former section 1302(7)", and

(3) in subparagraph (F)(ii)(I), by striking out "a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act)" and inserting instead "an eligible organization (as defined in section 1876(b))".

(o) The amendments made by the preceding subsections are effective on October 1, 1987.

S. 1643

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND REFERENCES IN ACT

SECTION 1. (a) This Act may be cited as the "Health Services Amendments of 1985".

(b) The amendments in this Act apply to the Public Health Service Act, unless otherwise specifically stated.

HANSEN'S DISEASE PROGRAM

SEC. 2. Section 320 (42 U.S.C. 255) is amended to read as follows:

"HANSEN'S DISEASE PROGRAM

"SEC. 320. (a) The Secretary—

"(1) shall provide care and treatment without charge at the Public Health Service facility in Carville, Louisiana, to any person suffering from Hansen's disease who needs and requests care and treatment for that disease, and

"(2) may provide for the care and treatment of Hansen's disease without charge for any person who requests such care and treatment.

"(b) The Secretary shall make payments to the Board of Health of Hawaii for the care and treatment in its facilities of persons suffering from Hansen's disease at a per diem rate, determined from time to time by the Secretary, which shall, subject to the availability of appropriations, be approximately equal to the per diem operating cost per patient of those facilities, except that the per diem rate shall not be greater than the comparable per diem operating cost per Hansen's disease patient at the Public Health Service facility in Carville, Louisiana.".

REPEAL OF AUTHORITY FOR MEDICAL EXAMINATIONS OF SEAMEN AND LONGSHOREMEN

SEC. 3. Section 324(a) (42 U.S.C. 251(a)) is amended—

(1) by adding "and" at the end of paragraph (1),

(2) by striking out the semicolon at the end of paragraph (2) and inserting instead a period, and

(3) by striking out paragraphs (3) and (4).

APPROPRIATION AUTHORIZATIONS FOR NATIONAL HEALTH SERVICE CORPS

SEC. 4. Section 338(a) (42 U.S.C. 254k(a)) is amended—

(1) by striking out "and" after "1983;", and

(2) by inserting "; $50,000,000 for the fiscal year ending September 30, 1986; $50,400,000 for the fiscal year ending September 30, 1987; and $50,800,000 for the fiscal year ending September 30, 1988" before the period.

ELIMINATION OF LIMIT ON FEE FOR CLINICAL LABORATORY LICENSES

SEC. 5. Section 353(d)(3) (42 U.S.C. 263a(d)(3)) is amended to read as follows:

"(3) The Secretary may require payment of fees for the issuance and renewal of licenses. Any fees collected shall be credited, to the extent specified in appropriation acts, to the appropriations used for clinical laboratory activities (as determined by the Secretary) and shall remain available until expended.

REPEAL OF HEALTH PLANNING AUTHORITIES

SEC. 6. (a) Title XV (42 U.S.C. 300k-1—300n-6) is repealed.

(b)(1) Section 2(f) (42 U.S.C. 201(f)) is amended by striking out "1531(1),".

(2) Section 314 (42 U.S.C. 246) is repealed.

(3) Section 332 (42 U.S.C. 254(c)) is amended—

(A) by striking out paragraph (1), and

(B) by renumbering paragraphs (2) and (3) as (1) and (2), respectively.

(4) Section 332(f) (42 U.S.C. 254e(f)) is amended—

(A) by adding "and" at the end of paragraph (1),

(B) by striking out paragraph (2), and

(C) by renumbering paragraph (3) as (2).

(5) Section 333(b) (42 U.S.C. 254(b)) is repealed.

(6) Section 1302 (42 U.S.C. 300e-1) is amended—

(A) by striking out paragraph (6),

(B) by striking out the second sentence of paragraph (7), and

(C) by renumbering paragraphs (7) through (9) as (6) through (8).

(7) Section 1306(b) (42 U.S.C. 300e-5(b)) is amended—

(A) by striking out paragraph (5), and

(B) by renumbering paragraphs (6) through (8) as (5) through (7).

(8) Subsections (a)(1)(B) and (g) of section 1310 (42 U.S.C. 300e-9) are each amended by striking out "314(d)," and "1525,".

(9) Section 1621(b) (42 U.S.C. 300s-1(b)) is amended—

(A) in paragraph (1)—

(i) by striking out subparagraph (A), and

(ii) by redesignating subparagraphs (B) through (K) as (A) through (J),

(B) in paragraph (2)(A)(i), by striking out "subparagraph (D)" and inserting instead "subparagraph (C)", and

(C) in paragraph (2)(A)(ii), by striking out "subparagraph (E)" and inserting instead "subparagraph (D)".

(10) Section 1622(a)(1)(B) (42 U.S.C. 300s-1a(a)(1)(B)) is amended to read as follows: "(B) which is disapproved as a transferee by an entity designated by the chief executive officer of the State, or".

(11) Section 1624 (42 U.S.C. 300s-3) is amended—

(A) by striking out paragraph (12), and

(B) by renumbering paragraphs (13) and (14) as (12) and (13), respectively.

(12) The second sentence of section 1627 (42 U.S.C. 300s-6) is amended by striking out "shall report such noncompliance to the health systems agency for the health service area in which such entity is located and the State health planning and development agency of the State in which the entity is located and".

(13) Part D of title XVI (42 U.S.C. 300t) is repealed.

(14) Section 1641 (42 U.S.C. 300t-11) is amended by striking out everything after "under" and inserting instead the following: "which grants and technical assistance may be provided to hospitals in operation on the date of enactment of this part (1) for the discontinuance of unneeded hospital services, and (2) for the conversion of unneeded hospital services to other health service needed by the community.".

(15) Section 1642(b) (42 U.S.C. 300t-12(b)) is amended—

(A) by striking out paragraph (2),

(B) by renumbering paragraph (3) as (2), and

(C) by revising paragraph (2) (as so renumbered) to read as follows:

"(2)(A) The Secretary may not approve an application of a hospital for a grant if the Secretary is unable to determine that the cost of providing inpatient health services in the area in which the applicant is located will be less than if the inpatient health services proposed to be discontinued were not discontinued.

"(B) In considering application of hospitals for grants, the Secretary shall give special consideration to applications which will result in the greatest reduction in hospital costs within an area.".

(16) Section 1643 (42 U.S.C. 300t-13) is repealed.

(17) Section 1644 (42 U.S.C. 300t-14) is amended by striking out "and 1643".

(18) Section 2115(1)(B) (42 U.S.C. 300aa-14(1)(B)) is amended to read as follows: "(B) which is disapproved as a transferee by the State mental health authority or by another entity designated by the chief executive officer of the State, or".

(19) Section 1121(c) of the Social Security Act (42 U.S.C. 1320a(c)) is amended by striking out ", including health systems agencies (designated under section 1515 of the Public Health Service Act) and State health planning and development agencies (designated under section 1521 of such Act),".

(20) Section 1122(b) of the Social Security Act (42 U.S.C. 1320a-1(b)) is amended—

(A) in the matter preceding paragraph (1), by striking out "described in clause (ii) of subsection (d)(1)(B)",

(B) by striking out paragraph (2),

(C) by renumbering paragraph (3) as (2), and

(D) in the matter following paragraph (2) (as so renumbered), by striking out "or any such other agency" and "pursuant to the Public Health Service Act".

(21) Section 1122(d)(1) of the Social Security Act (42 U.S.C. 1320a-1(d)(1)) is amended—

(A) by revising paragraph (A) to read as follows:

"(A) the planning agency designated in the agreement described in subsection (b) had not been given notice of any proposed capital expenditure (in accordance with such procedure or in such detail as may be required by such agency) at least sixty days prior to obligation for such expenditure; or",

(B) in paragraph (B)(i), by striking out "or an agency so described", "or any other agency described in clause (ii)", "or any other agency described in clause (ii)", and "or in the area for which such other agency has responsibility", and

(C) in paragraph (B)(ii), by striking out "subsection (b)" and everything that follows through subclause (II) and inserting instead the following: "subsection (b), granted to the person proposing such capital expenditure an opportunity for a fair hearing with respect to such findings,".

(22) Section 1160(b)(2) of the Social Security Act (42 U.S.C. 1320c-9(b)(2)) is amended by striking out "(including health systems agencies and State health planning and development agencies)".

(23) Section 1861(v)(7)(A) of the Social Security Act (42 U.S.C. 1395x(v)(7)(A)) is amended by striking out "or area-wide".

(24) Section 1861(z)(2)(B) of the Social Security Act (42 U.S.C. 1395x(z)(2)(B)) is amended—

(A) by inserting "(if any)" after "submitted to the agency", and

(B) by striking out ", or if no such agency is designated, to the appropriate health planning agency in the State".

(25) Section 1883(b) of the Social Security Act (42 U.S.C. 1395tt(b)) is amended to read as follows:

"(b) The Secretary may not enter into an agreement under this section with any hospital unless, except as provided under subsection (g), the hospital is located in a rural area and has less than 50 beds.".

(26) Section 1884(b)(1)(C) of the Social Security Act (42 U.S.C. 1395uu(b)(1)(C)) is amended by striking out "with the findings of an appropriate health planning agency and".

(27) The National Health Planning and Resources Development Act of 1974 (42 U.S.C. 217a, nt, 229 nt, 291b nt, 300k, 300k nt, 300-14 nts and 300m nts) is repealed.

APPROPRIATION AUTHORIZATIONS FOR AND EXPANDED SCOPE OF PRIMARY CARE BLOCK GRANT

SEC. 7. (a) Section 1921 (42 U.S.C. 300y) is repealed.

(b) Section 1922 (42 U.S.C. 300y-1) is amended to read as follows:

"APPROPRIATION AUTHORIZATIONS

"SEC. 1922. For allotments under section 1924 there are authorized to be appropriated $550,100,000 for fiscal year 1986, $573,204,000 for fiscal year 1987, and $596,132,000 for fiscal year 1988.".

(c) Section 1923 (42 U.S.C. 300y-2) is repealed.

(d)(1) Section 1924(a) (42 U.S.C. 300y-3(a)) is amended by striking out "the amount granted for fiscal year 1982" and all that follows up to the period and inserting instead "the amounts provided by the Secretary from appropriations for fiscal year 1985 to the State and to entities in the State under section 1925, former sections 329, 330, 1001, 1003, and 1005, and former section 427(a) of the Federal Mine Safety and Health Act of 1977 bore to the amounts provided by the Secretary from appropriations for fiscal year 1985 to all States and to entities in all States under those provisions."

(2) Section 1924(b) (42 U.S.C. 300y-3(b)) is amended by striking out paragraphs (2) through (4) and inserting instead the following:

"(2) The Secretary shall reserve for the purpose of paragraph (1) from amounts that would otherwise be allotted to such State under subsection (a) an amount equal to the amount which bears the same ratio to the State's allotment for the fiscal year involved as the total amount provided for fiscal year 1985 by the Secretary to such tribe or tribal organization under the provisions of law referred to in subsection (a) bore to the total amount provided for such fiscal year by the Secretary to the State and entities (including Indian tribes and tribal organizations) in the State under such provisions of law.

"(3) The amount reserved by the Secretary on the basis of a determination under this subsection shall be granted to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

"(4) In order for an Indian tribe or tribal organization to be eligible for a grant for a fiscal year under this subsection, it shall submit to the Secretary a plan for such fiscal year which meets such criteria as the Secretary may prescribe.

"(5) The terms 'Indian tribe' and 'tribal organizations' have the same meaning given such terms in section 4(b) and section 4(c) of the Indian Self-Determination and Education Assistance Act.".

(3) Section 1924 (42 U.S.C. 300y-3) is amended by adding at the end the following:

"(c) To the extent that all the funds appropriated under section 1922 for a fiscal year and available for allotment in such fiscal year are not otherwise allotted to States because—

"(1) one or more States have not submitted an application or description of activities in accordance with section 1927 for the fiscal year;

"(2) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or

"(3) some State allotments are offset or repaid under section 1928(b)(3);

such excess shall be allotted among each of the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this subsection.".

(e) Section 1925(a)(2) (42 U.S.C. 300y-4(a)(2)) is amended by striking out "if the Secretary determines that the State acted in accordance with section 1926(a)(1) and there is good cause for funds remaining unobligated".

(f)(1) The heading to section 1926 (42 U.S.C. 300y-5) is amended to read "USE OF ALLOTMENTS".

(2) Section 1926(a) (42 U.S.C. 300y-5(a)) is amended to read as follows:

"SEC. 1926. (a) Except as limited by subsection (b) or as provided by subsection (c), a State may use amounts paid to it under section 1925 (and amounts transferred under other provisions of law for use under this part) for—

"(1) assistance to community health centers that serve medically underserved populations,

"(2) health services for migratory and seasonal agricultural workers and their families,

"(3) voluntary family planning services and training of family planning personnel, and

"(4) health services for respiratory and pulmonary impairments in active and inactive coal miners.

Amounts provided for the activities referred to in the preceding sentence may also be used for related planning, administration, and educational activities.".

(3) Section 1926(b) (42 U.S.C. 300y-5(b)) is amended—

(A) in paragraph (1), by striking out "except in fiscal year 1983 in the case of a community health center which used funds provided under section 330 for fiscal year 1983 to provide such services" and inserting instead "other than inpatient services prescribed by the Secretary",

(B) by adding "or" at the end of paragraph (3),

(C) by substituting a period for ", or" at the end of paragraph (4),

(D) by striking out paragraph (5), and

(E) by striking out the last sentence.

(4) Section 1926 (42 U.S.C. 300y-5) is amended by adding at the end the following:

"(c) From the amounts paid to a State under section 1925 from amounts appropriated for a fiscal year, the State may transfer up to 10 percent for use under other block grants administered by the Secretary."

"(d)(1) Not more than 10 percent of the Federal funds available for a fiscal year for use by a State under subsection (a) may be used for administering those funds or for the planning of health services. The State will pay from non-Federal sources the remaining costs of administering those funds and of the planning of health services.

"(2) For purposes of the preceding paragraph, the term 'Federal funds available for a fiscal year' for use by a State under subsection (a) means the sum of—

"(A) the amounts paid to the State for that fiscal year under section 1925 less any amounts transferred by the State under subsection (c) of this section,

"(B) amounts paid by the Secretary to the State for that fiscal year under any other authority and transferred for use by the State under subsection (a), and

"(C) amounts reserved by the State under section 1925(a)(2) from the amounts paid to it for the preceding fiscal year, to the extent that those amounts were not used in determining the amounts that were used in that preceding fiscal year for administering funds or for the planning of health services.

"(e)(1) A State shall expend in fiscal year 1986 for voluntary family planning services and training of family planning personnel, from the amounts paid to it for fiscal year 1986 under section 1925 or under section 7(p)(2)(A) of the Health Services Amendments of 1985 (and from amounts transferred under other provisions of law for use under this part), a percentage proportion equal to at least 80 percent of the percentage proportion of the amounts provided to the State or to entities in the State under section 1925, former sections 329, 330, 1001, 1003, and 1005, and former section 427(a) of the Federal Mine Safety and Health Act of 1977, from sums appropriated for fiscal year 1985, that were provided under former sections 1001, 1003, and 1005.

"(2) A State shall expend in fiscal year 1987 for voluntary family planning services and training of family planning personnel, from the amounts paid to it for fiscal year 1987 under section 1925 (and from amounts transferred under other provisions of law for use under this part), a percentage proportion equal at least 50 percent of the percentage proportion of the amounts provided to the State or to entities in the State under section 1925, former sections 329, 330, 1001, 1003, and 1005, and former section 427(a) of the Federal Mine Safety and Health Act of 1977, from sums appropriated for fiscal year 1985, that were provided under former sections 1001, 1003, and 1005.

"(f)(1) A State shall expend in fiscal year 1986 for health services for migratory and seasonal agricultural workers and their families, from the amounts paid to it for fiscal year 1986 under section 1925 or under section 7(p)(2)(A) of the Health Services Amendments of 1985 (and from amounts transferred under other provisions of law for use under this part), a percentage proportion equal to at least 80 percent of the percentage proportion of the amounts provided to the State or to entities in the State under section 1925, former sections 329, 330, 1001, 1003, and 1005, and former section 427(a) of the Federal Mine Safety and Health Act of 1977, from sums appropriated for fiscal year 1985, that were provided under former section 329.

"(2) A state shall expend in fiscal year 1987 for health services for migratory and seasonal agricultural workers and their families, from the amounts paid to it for fiscal year 1987 under section 1925 (and from amounts transferred under other provisions of law for use under this part), a percentage proportion equal to at least 50 percent of the percentage proportion of the amounts provided to the State or to entities in the State under section 1925, former sections 329, 330, 1001, 1003, and 1005, and former section 427(a) of the Federal Mine Safety and Health Act of 1977, from sums appropriated for fiscal year 1985, that were provided under former section 329.".

(g)(1) Section 1927(a) (42 U.S.C. 300y-6(a)) is amended—

(A) in the third sentence, by striking out "in such form and", and

(B) in the fourth sentence, by striking out "the legislature of".

(2) Section 1927(b) (42 U.S.C. 300y-6(b)) is amended to read as follows:

"(b) No funds shall be allotted under section 1924 to a State for any fiscal year unless the State affords an opportunity for public comment on the proposed use and distribution of funds to be provided under section 1925 for that fiscal year.".

(3) Section 1927(c) (42 U.S.C. 300y-6(c)) is amended—

(A) in the matter preceding paragraph (1), by striking out "the chief executive officer of",

(B) in paragraph (2), by striking out "fiscal, managerial, and clinical performance of community health centers; and" and inserting instead "effective performance of entities which receive funds from the allotment of the State under this part.",

(C) by striking out paragraph (3), and

(D) in the last sentence, by striking out "services of community health centers by medically underserved populations, and to evaluate the performance of community health centers" and inserting instead "health services, and to evaluate the performance of entities which receive funds from the allotment of the State under this part". (4) Section 1927(d) (42 U.S.C. 300y-6(d)) is amended—

(A) by striking out "chief executive officer of the", "(in accordance with such form as the Secretary shall provide)", and "and the funds the State is required to obligate under section 1926(a)(4) for that fiscal year", and

(B) by inserting ", including a statement of goals and objectives, information on the types of activities to be supported, geographic areas to be served, and categories or characteristics of individuals to be served, and the criteria and method to be used for the distribution of the payments" before the period.

(h)(1) The second sentence of section 1928(a)(1) (42 U.S.C. 300y-7(a)(1)) is amended—

(A) by striking out "the Secretary determines (after consultation with the States and the Comptroller General)" and inserting instead "the State determines",

(B) by striking out "and" at the end of clause (B), and

(C) by inserting ", and (D) to determine how the State has met the goals and objectives previously stated" before the period.

(2) The first sentence of section 1928(b)(2) (42 U.S.C. 300y-7(b)(2)) is amended by striking out "annually" and inserting instead "biennially".

(3) Paragraphs (5) and (6) of section 1928(b) (42 U.S.C. 300y-7 (b)) are repealed.

(i)(1) Section 1929 (a)(1) (42 U.S.C. 300y-8(a)(1)) is amended by striking out the last sentence.

(2) Section 1929(b) (42 U.S.C. 300y-8(b)) is amended—

(A) by striking out paragraph (1), and

(B) by striking out the paragraph designation "(2)".

(3) Section 1929(d)(1) (42 U.S.C. 300y-8(d)(1) is amended by inserting "study or" before "investigation".

(j) Section 1932 (42 U.S.C. 300y-11) is amended—

(1) by striking out subsection (b), and

(2) by striking out the subsection designation "(a)".

(k) Section 427(a) of the Federal Mine Safety and Health Act of 1977, and title X and subparts I and IV of part D of title III (30 U.S.C. 937(a) and 42 U.S.C. 300—300a-6a, 254a-1—254c, and 256a) are repealed.

(l) Section 427(c) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 937(c)) is amended by striking out the first sentence.

(m) Subparts II and III of part D of title III are redesignated as subparts I and II, respectively.

(n) Section 931(c) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 300a nt) is repealed.

(o)(1) Sections 3 and 4 of the Family Planning Services and Population Research Act of 1970 (42 U.S.C. 3505a and 3505b) are repealed.

(2) Section 2 of the Act (42 U.S.C. 300 nt) is amended—

(A) by adding "and" at the end of paragraph (6),

(B) by striking out "; and" at the end of paragraph (7) and adding instead a period, and

(3) by striking out paragraph (8).

(p)(1) Except as provided in paragraph (2), the amendments made by the preceding subsections are effective beginning with appropriations for fiscal year 1986.

(2)(A) If any State (as defined in the Public Health Service Act) has not, by thirty days before the beginning of any calendar quarter in fiscal year 1986, submitted an application under section 1927 of the Public Health Service Act for an allotment for fiscal year 1986 under subsection (a) of section 1924 of that Act, the Secretary of Health and Human Services may provide during that quarter all or part of the State's allotment under that subsection to the State or to entities in the State under any of the provisions of law referred to in that subsection as in effect before the date of enactment of this Act.

(B) If the Secretary of Health and Human Services provides amounts to a State or to entities in a State under paragraph (A) and the State subsequently files an application under section 1927 of the Public Health Service Act for an allotment for fiscal year 1986 under section 1924(a) of that Act, the allotment shall be reduced by the amounts the Secretary has provided under paragraph (A).

APPROPRIATION AUTHORIZATIONS FOR ADOLESCENT FAMILY LIFE DEMONSTRATION PROJECTS

SEC. 8. Section 2010(a) (42 U.S.C. 300z-9(a)) is amended—

(1) by striking out "and" after "1984,", and

(2) by inserting ", $14,706,000 for the fiscal year ending September 30, 1986, $15,206,000 for the fiscal year ending September 30, 1987, and $15,784,000 for the fiscal year ending September 30, 1988" before the period.

FISCAL AGENTS

SEC. 9. Title XXI is amended by adding at the end the following:

"FISCAL AGENTS

"SEC. 2116. The Secretary may enter into contracts with public or private entities to determine the amounts payable and make payments to persons who on behalf of the Public Health Service furnish health services to individuals, and to perform related functions as determined by the Secretary. The Secretary may advance funds to the entities to enable them to make such payments. The Secretary may enter into contracts under this section without regard to section 3709 of the Revised Statutes (41 U.S.C. 5) or any provision of law requiring competition.".

ELIMINATION OF EXPENDITURE TIME LIMITATION UNDER THE MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT

SEC. 10. Section 503(b) of the Social Security Act (42 U.S.C. 703(b)) is amended by striking out the second sentence.

LIMITED APPLICABILITY OF CERTAIN ADDITIONAL SPECIAL PAY TO PHYSICIANS IN THE PUBLIC HEALTH SERVICE COMMISSIONED CORPS

SEC. 11. (a) Section 208(a)(2) (42 U.S.C. 210(a)(2)) is amended—

(1) by inserting the subparagraph designation "(A)" after the paragraph designation "(2)",

(2) by inserting ", except as otherwise provided in subparagraph (B)" before the period, and

(3) by adding at the end the following:

"(B) A commissioned medical officer in the Regular or Reserve Corps may not receive additional special pay under paragraph (4) of section 302(a) of title 37, United States Code, for any period during which the officer is providing obligated service under section 338B (42 U.S.C. 254m), (or under former section 225(e) or 752). Such an officer serving during any other period may be provided additional special pay under that paragraph at the discretion of the Secretary up to the amounts described in that paragraph. The Secretary, in exercising his descretion under the preceding sentence, shall take into consideration the recruitment and retention problems of the Public Health Service, the level of performance of the officer concerned, and provisions of law relating to additional pay for Government physicians not in the uniformed services.".

(b) The second sentence of section 302(e) of title 37, United States Code, is amended by striking out "(a)(4) or".

(c) The amendments made by the preceding subsections shall not diminish benefits under an agreement entered into by an officer before the date of enactment of this Act.

CASH AWARDS FOR COMMISSIONED OFFICERS

SEC. 12. (a) Section 221(a) (42 U.S.C. 213a(a)) is amended by adding at the end the following:

"(15) Section 1124, Cash awards for suggestions, inventions, or scientific achievements.".

HEALTH CARE FOR INVOLUNTARILY SEPARATED COMMISSIONED OFFICERS AND DEPENDENTS

SEC. 13. Section 326 (42 U.S.C. 253) is amended by inserting after subsection (a) the following:

"(b) The Secretary may provide for health care for an officer of the Regular or Reserve Corps involuntarily separated from the Service (or for any dependent of the officer) for not more than one year from the date of separation if—

"(1) the officer (or dependent) was receiving health care at the expense of the Service at the time of separation, and

"(2) the Secretary finds that the officer (or dependent) is unable to obtain appropriate insurance for the condition for which he was receiving health care.".

REPEAL OF NARCOTIC ADDICT CIVIL COMMITMENT AND SERVICES AUTHORITIES

SEC. 14. (a)(1) Titles III and IV of the Narcotic Addict Rehabilitation Act of 1966 (42 U.S.C. 3411-3441) are repealed.

(2) Section 2 of Public Law 89-793 (42 U.S.C. 3401) is amended—

(A) in the first sentence, by striking out "charged with or" and "prosecution or", and

(B) by striking out the second sentence.

(3) Section 605 of Public Law 89-793 (42 U.S.C. 3401 nt) is amended by striking out the first and third sentences.

(b)(1) Chapter 175 of title 28, United States Code, is repealed.

(2) The table of contents to part VI of title 28, United States Code, is amended by deleting the matter referring to chapter 175.

(c)(1) Part E of title III (42 U.S.C. 257—261a) is repealed.

(2) Subsections (k) and (q) of section 2 (42 U.S.C. 201) are repealed.

(3) Subsection (j) of section 2 (42 U.S.C. 201) is amended by striking out "'habit-forming narcotic drug' or".

ELIMINATION OF UNNEEDED ADVISORY BODIES AND REPEAL OF OBSOLETE PROVISIONS

SEC. 15 (a) Sections 600 through 608 (42 U.S.C. 291-291h), sections 610 through 643A (42 U.S.C. 291j—291m-1), subsections (b) and (l) of section 645 (42 U.S.C. 291o), and title IX are repealed.

(b) Subsections (a), (d)(1), and (e) of section 609 (42 U.S.C. 291i) are each amended by inserting "former" before "section" each place it occurs.

(c) Section 645(j) (42 U.S.C. 291o(j)) is amended—

(1) by striking out "Surgeon General" each place it occurs and inserting instead "Secretary",

(2) by striking out "is to be" and inserting instead "was", and

(3) by inserting "former" before "section 602(a)(2)".

(d) Section 1602(e)(1) (42 U.S.C. 300q-2(e)(1)) is amended by inserting "former" before "section 626".

FOR-PROFIT ENTITIES AS GRANTEES UNDER VARIOUS PROGRAMS

SEC. 16. (a) Section 318(a) (42 U.S.C. 247c(a)), 318(b) (42 U.S.C. 247c(b)), and the matter in section 2002(a)(3) (42 U.S.C. 300z-1(a)(3)) preceding subparagraphs (A) are each amended by striking out "nonprofit".

(b)(1) The first sentence of section 1904(b) (42 U.S.C. 300w-3(b)) and of section 1915(b) (42 U.S.C. 300x-3(b)) are each amended—

(A) by adding "or" at the end of paragraph (3),

(B) by substituting a period for ", or" at the end of paragraph (4), and

(C) by striking out paragraph (5).

(2) The first sentence of section 504(b) of the Social Security Act (42 U.S.C. 704(b)) is amended—

(A) by adding "or" at the end of paragraph (3),

(B) by substituting a period for "; or" at the end of paragraph (4), and

(C) by striking out paragraph (5).

ELIMINATION OF UNNECESSARY REPORTS

SEC. 17. (a) Section 317(h) (42 U.S.C. 247b(h)) is repealed.

(b) Section 336A (42 U.S.C. 254i) is repealed.

(c)(1) Section 2111 (42 U.S.C. 300aa-10) is repealed.

(2) The first sentence of section 383(b) (42 U.S.C. 277(b)) is amended by striking out ", and the Secretary shall include in his annual report to the Congress a statement covering the recommendations made by the Board and the disposition thereof".

(d) Section 311(c) of title 37, United States Code, is repealed.

(e) Section 26(e)(2) of the Toxic Substances Control Act (15 U.S.C. 2625(e)(2)) is amended to read as follows:

"(2) The Administration and the Secretary shall—

"(A) define the term 'known financial interests' for purposes of paragraph (1), and

"(B) establish the methods by which the requirement to file written statements specified in paragraph (1) will be monitored and enforced, including appropriate provisions for review by the Administrator and the Secretary of such statements.".

TECHNICAL AMENDMENTS

SEC. 18. (a)(1) The first sentence of section 311(c)(1) (42 U.S.C. 243(c)(1)) is amended by striking out "or condition referred to in section 317(f)" and "involving or resulting from disasters or any such disease".

(2) The second sentence of section 311(c)(1) (42 U.S.C. 243(c)(1)) is amended by striking out everything after "health emergencies)" up to the period.

(b) Section 928(b) of the Omnibus Budget Reconciliation Act of 1981 is amended by striking out "(42 U.S.C. 247b(j)(1)(A))" and inserting instead "(42 U.S.C. 247b(j))".

S. 1644

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND REFERENCES IN ACT

SECTION 1. (a) This Act may be cited as the "Health Professions Amendments of 1985".

(b) The amendments in this Act apply to the Public Health Service Act, unless otherwise specifically stated.

AUTHORITY TO INSURE HEALTH EDUCATION ASSISTANCE LOANS

SEC. 2. (a) The first sentence of section 728(a) (42 U.S.C. 294a(a)) is amended—

(1) by striking out "and" after "1983;". and

(2) by inserting "; $250,000,000 for the fiscal year ending September 30, 1985; and $100,000,000 for the fiscal year ending September 30, 1986, and each of the two succeeding fiscal years" before the period.

(b) The second sentence of section 728(a) (42 U.S.C. 294a(a)) is amended by striking out "1987" and inserting instead "1991".

CHANGES IN THE HEALTH EDUCATION ASSISTANCE LOANS PROGRAM

SEC. 3. (a) Section 729(a) (42 U.S.C. 294(a)) is amended by inserting after the second sentence the following: "The annual and aggregate limits specified in the preceding sentences shall be reduced by any amounts received by the borrower as a scholarship under the National Health Service Corps Scholarship Program or under any program administered by the Department of Defense.".

(b)(1) Section 731(a)(2)(B) (42 U.S.C. 294d(a)(2)(B)) is amended by inserting "(not in excess of four years)" after "residency program".

(2) Section 731(a)(2)(C)(ii) (42 U.S.C. 294d(a)(2)(C)(ii)) is amended by inserting "(including any period in such a program described in subparagraph (B))" after "program".

(c) Section 731(a)(2)(C) (42 U.S.C. 294d(a)(2)(C)) is amended by striking out "or the 33-year period".

(d) Section 731 (42 U.S.C. 294d) is amended—

(1) by striking out subsection (c), and

(2) by redesignating subsection (d) as (c).

(e) The first sentence of section 732(c) (42 U.S.C. 294e(c)) is amended to read as follows: "The Secretary shall, pursuant to regulations, charge a premium for insurance on each loan under this subpart, payable in advance, at such times and in such manner as may be prescribed by the Secretary.".

(f) The first sentence of subsection (a) and of subsection (b) of section 734 (42 U.S.C. 294g) are each amended by inserting "collection or" before "default".

(g) The amendments made by subsections (b) and (c) of this section do not apply to any individual who has entered into a written agreement before the date of enactment of this Act for a loan insured under subpart I of part C of title VII of the Public Health Service Act.

CHANGES IN THE HEALTH PROFESSIONS STUDENT LOANS PROGRAMS

SEC. 4. (a)(1)(A) Section 741(b) (42 U.S.C. 294n(b)) is amended by adding at the end the following: "A student in a school of medicine or osteopathy who will graduate from the school after June 30, 1979, shall be eligible to receive a loan under this section after October 1, 1977, only if the student is of exceptional financial need (as defined by the Secretary in regulations).".

(B) Section 403(f) of the Health Professions Educational Assistance Act of 1976 (42 U.S.C. 294n nt) is repealed.

(2) Section 836(b)(1) (42 U.S.C. 297b(b)(1)) is amended—

(A) by striking out "and" at the end of clause (A), and

(B) by inserting before the semicolon the following: ", and (C) for a loan made after October 1, 1985, if the student will graduate from the school after June 30, 1988, is of exceptional financial need (as defined by the Secretary in regulations)".

(b)(1) Section 741(i) (42 U.S.C. 294n(i)) is amended to read as follows:

"(i) Subject to regulations of the Secretary, a school may assess a charge with respect to loans made under this subpart to cover the costs of insuring aginst cancellation of liability under subsection (d).".

(2) Section 836(c) (42 U.S.C. 297b(c)) is amended to read as follows:

"(c) Subject to regulations of the Secretary, a school may assess a reasonable charge with respect to loans made under this subpart to cover the costs of insuring against cancellation of liability under subsection (b)(4).".

(c) Sections 741(j) (42 U.S.C. 294n(j)) and 836(f) (42 U.S.C. 297b(f)) are each amended—

(1) in the first sentence, by striking out "may" and inserting instead "shall", and

(2) by striking out the second sentence and inserting instead the following: "The amount of any such charge shall be at six percent (calculated on an annual basis) of the outstanding loan amount plus costs of collection.".

(d)(1) Section 741 (42 U.S.C. 294n) is amended by adding at the end the following:

"(m) The Secretary is authorized to attempt to collect any loan which was made under this subpart and which is in default, referred to him by a school with which he has an agreement under this subpart, on behalf of that school under such terms and conditions as the Secretary may prescribe (including reimbursement from the school's student loan fund for expenses he may reasonably incur in attempting collection), but only if the school has met requirements specified by the Secretary in attempting to collect the loan. A loan so referred shall be treated as a debt subject to section 5514 of title 5, United States Code. Amounts collected shall be deposited in the school's student loan fund. Whenever the Secretary desires to bring a civil action regarding any such loan, he shall refer the matter to the Attorney General for appropriate action.".

(2) Section 836 (42 U.S.C. 297b) is amended by adding at the end the following:

"(k) The Secretary is authorized to attempt to collect any loan which was made under this subpart and which is in default, referred to him by a school with which he has an agreement under this subpart, on behalf of that school under such terms and conditions as the Secretary may prescribe (including reimbursement from the school's student loan fund for expenses he may reasonably incur in attempting collection), but only if the school has met requirements specified by the Secretary in attempting to collect the loan. A loan so referred shall be treated as a debt subject to section 5514 of title 5, United States Code. Amounts collected shall be deposited in the school's student loan fund. Whenever the Secretary desires to bring a civil action regarding any such loan, he shall refer the matter to the Attorney General for appropriate action.".

(e) Sections 743 (42 U.S.C. 294p) and 839 (42 U.S.C. 297e) are each amended by striking out "1987" each place it occurs and inserting instead "1990".

(f) Section 841 (42 U.S.C. 297h) is repealed.

(g) The amendments made by subsections (b) and (c) apply to loans made after the date of enactment of this Act.

REPEAL OF HEALTH PROFESSIONS ASSISTANCE AUTHORITIES

SEC. 5. (a)(1) Sections 702 (42 U.S.C. 292b), 720 (42 U.S.C. 293), 721 (42 U.S.C. 293a), 722 (42 U.S.C. 293b), and 725 (42 U.S.C. 293h), subpart V of part C of title VII (42 U.S.C. 294z and 294aa), and parts D, E, F, and G of title VII (42 U.S.C. 295—295h-7) are repealed.

(2) Section 701 (42 U.S.C. 292a) is amended—

(A) by striking out paragraphs (6) through (10), and

(B) by renumbering paragraphs (11) and (12) as (6) and (7), respectively.

(3) Section 705(d) (42 U.S.C. 292e(d)) is amended by striking out "scholarship, traineeship, loan," and inserting instead "loan".

(4) Section 707 (42 U.S.C. 292g) is amended by striking out everything after "Department," and inserting instead the following: "except that the authority to make a grant, enter into a contract, continue a grant or contract, or modify a contract under any program authorized by this title shall not be delegated to any administrator of, or officer in, a regional office or offices of the Department.".

(5) Section 724 (42 U.S.C. 293g) is amended to read as follows:

"REGULATIONS

"SEC. 724. The Secretary may make such regulations as he finds necessary to carry out the provisions of this part.".

(b)(1) Sections 801 (42 U.S.C. 296), 802 (42 U.S.C. 296a), 803 (42 U.S.C. 296b), 805 (42 U.S.C. 296d), 851 (42 U.S.C. 298), 854 (42 U.S.C. 298b-1), 855 (42 U.S.C. 298b-2), and 857 (42 U.S.C. 298b-4), subparts II through IV of part A of title VIII (42 U.S.C. 296e-296m), and subparts I and III of part B of title VIII (42 U.S.C. 297, 297-1, and 297j) are repealed.

(2) Part A of title VII (42 U.S.C. 296-296d) is amended by striking out the heading "Subpart I—Construction Assistance".

(3) Part B of title VIII (42 U.S.C. 297a-297g) is amended—

(A) by striking out the heading "Subpart II—Student Loans", and

(B) by striking out "subpart" each place it occurs and inserting instead "part".

(4) Section 853 (42 U.S.C. 298b) is amended—

(A) in the first sentence of paragraph (6), by striking out ", except that" and everything that follows up to the period,

(B) by striking out paragraphs (8) and (10), and

(C) by renumbering paragraph (9) as (8).

(5) Section 856 (42 U.S.C. 298b-3) is amended by striking out everything after "Services," and inserting instead the following: "except that the authority to make a grant or enter into a contract under any program authorized by this title shall not be further delegated to any administrator of, or officer in, any regional office or offices in the Department.".

(c) Section 501 (42 U.S.C. 290aa) is amended—

(1) by striking out subsection (g), and

(2) by redesignating subsection (h) as (g).

ELIMINATION OF REQUIRED REPORT ON THE NATIONAL HEALTH SERVICE CORPS SCHOLARSHIP PROGRAM

SEC. 6. Section 338A(i) (42 U.S.C. 254l(i)) is repealed.

CLARIFICATION OF OBLIGATION UNDER THE NATIONAL HEALTH SERVICE CORPS SCHOLARSHIP PROGRAM FOR INDIVIDUALS WHO REFUSE SCHOLARSHIP PAYMENTS

SEC. 7. (a) Section 338D(a)(4) (42 U.S.C. 2540(a)(4)) is amended by striking out "in part" and inserting instead "in substantial part (as determined by the Secretary in regulations)".

(b) The amendment made by subsection (a) applies to all individuals who enter or have entered into a contract under section 338A of the Public Health Service Act (42 U.S.C. 254) before, on, or after the date of enactment of this Act.

REPEAL OF FUNDING REQUIREMENTS FOR CERTAIN PROFESSIONS UNDER THE NATIONAL HEALTH SERVICE CORPS SCHOLARSHIP PROGRAM

SEC. 8. Section 338F(b) (42 U.S.C. 254q(b)) is repealed.

ELIMINATION OF UNNEEDED HEALTH PROFESSIONS EDUCATION REPORTING REQUIREMENT

SEC. 9. (a) Subsection (c) of section 708 (42 U.S.C. 292h) is repealed.

(b) Subsections (d) through (g) of that section are redesignated as subsections (c) through (e).

REPEAL OF UNNEEDED AUTHORITIES FOR STANDARDS CONCERNING PERSONS WHO ADMINISTER RADIOLOGIC PROCEDURES AND FOR FEDERAL RADIATION GUIDELINES

SEC. 10. The Consumer-Patient Radiation Health and Safety Act of 1981 (42 U.S.C. 10001-10008 and 10001 nt) is repealed.

IMPROVED ENFORCEMENT OF REQUIREMENTS UNDER CERTAIN CONSTRUCTION PROGRAMS

SEC. 11. (a) Section 723 (42 U.S.C. 293c) is amended to read as follows:

"RECOVERY

"SEC. 723. (a) If at any time within twenty years (or withing such shorter period as the Secretary may prescribe by regulation for an interim facility) after the completion of construction of a facility with respect to which funds have been paid under former section 720(a)—

"(1)(A) in case the facility was an affiliated hospital or outpatient facility with respect to which funds have been paid under former section 720(a)(1), the owner shall cease to be a public or other nonprofit agency that would have been qualified to file an application under former section 605,

"(B) in case the facility was not an affiliated hospital or outpatient facility but was a facility with respect to which funds have been paid under former section 720(a)(1) or (3), the owner shall cease to be a public or nonprofit school, or

"(C) in case the facility was a facility with respect to which funds have been paid under former section 720(a)(2), the owner shall cease to be a public or nonprofit entity,

"(2) the facility shall cease to be used for the teaching or training purposes (or other purposes permitted under former section 722) for which it was constructed, or

"(3) the facility is used for sectarian instruction or as a place for religious worship,

the United States shall be entitled to recover from the owner the base amount prescribed by subsection (c)(1) plus the interest (if any) prescribed by subsection (c)(2).

"(b) The owner of a facility with respect to which an event described in any of the paragraphs of subsection (a) occurs shall provide the Secretary written notice of the event not later than 10 days after the date on which the event occurs.

"(c)(1) The base amount that the United States is entitled to recover under subsection (a) is the amount bearing the same ratio to the then value (as determined by the agreement of the parties or in an action brought in the district court of the United States for the district in which the facility is situated) of the facility as the amount of the Federal participation bore to the cost of construction.

"(2)(A) The interest that the United States is entitled to recover under subsection (a) is the interest for the period (if any) described in subparagraph (B) at a rate (determined quarterly) equal to 150 percent of the average bond equivalent rate of the thirteen week Treasury bills auctioned at the end of the preceding calendar quarter.

"(B) The period referred to in subparagraph (A) is the period beginning—

"(i) if notice is provided as prescribed by subsection (b), 191 days after the date of the event, or

"(ii) if notice is not provided as prescribed by subsection (b), 11 days after the event,

and ending on the date the amount the United States is entitled to recover is collected.

"(d) The Secretary may waive the recovery rights of the United States under subsection (a) with respect to a facility (under such conditions as the Secretary may set in regulations) if the Secretary determines that there is good cause for waiving those rights.

"(e) The right of recovery of the United States under subsection (a) shall not prior to judgment constitute a lien on any facility.".

(b) Section 804 (42 U.S.C. 296c) is amended to read as follows:

"RECOVERY

"SEC. 804. (a) If at any time within twenty years (or within such shorter period as the Secretary may prescribe by regulation for an interim facility) after the completion of construction of a facility with respect to which funds have been paid under this part—

"(1) the owner shall cease to be a public or nonprofit school,

"(2) the facility shall cease to be used for the training purposes for which it was constructed, or

"(3) the facility is used for sectarian instruction or as a place for religious worship,

the United States shall be entitled to recover from the owner the base amount prescribed by subsection (c)(1) plus the interest (if any) prescribed by subsection (c)(2).

"(b) The owner of a facility with respect to which an event described in any of the paragraphs of subsection (a) occurs shall provide the Secretary written notice of the event not later than 10 days after the date on which the event occurs.

"(c)(1) The base amount that the United States is entitled to recover under subsection (a) is the amount bearing the same ratio to the then value (as determined by the agreement of the parties or in an action brought in the district court of the United States for the district in which the facility is situated) of the facility as the amount of the Federal participation bore to the cost of the construction.

"(2)(A) The interest that the United States is entitled to recover under subsection (a) is the interest for the period (if any) described in subparagraph (B) at a rate (determined quarterly) equal to 150 percent of the average bond equivalent rate of the thirteen week Treasury bills auctioned at the end of the preceding calendar quarter.

"(B) The period referred to in subparagraph (A) is the period beginning—

"(i) if notice is provided as prescribed by subsection (b), 191 days after the date of the event, or

"(ii) if notice is not provided as prescribed by subsection (b), 11 days after the event.

and ending on the date the amount the United States is entitled to recover is collected.

"(d) The Secretary may waive the recovery rights of the United States under subsection (a) with respect to a facility (under such conditions as the Secretary may set in

regulations) if the Secretary determines that there is good cause for waiving those rights.

"(e) The right of recovery of the United States under subsection (a) shall not prior to judgment constitute a lien on any facility.".

(c) Section 2115 (42 U.S.C. 300aa-14) is amended to read as follows:

"RECOVERY

"SEC. 2115. (a) If any facility with respect to which funds have been paid under the former Community Mental Health Centers Act shall, at any time within twenty years after the completion of remodeling, construction, or expansion or after the date of its acquisition—

"(1) be sold or transferred to any entity (A) which would not have been qualified to file an application under section 222 of that former Act or (B) which is disapproved as a transferee by the State mental health authority or by another entity designated by the chief executive officer of the State, or

"(2) cease to used by a community mental health center in the provision of comprehensive mental heatlh services,

the United States shall be entitled to recover from the transferor, transferee, or owner, the base amount prescribed by subsection (c)(1) plus the interest (if any) prescribed by subsection (c)(2).

"(b) The transferor and transferee of a facility that is sold or transferred as described in subsection (a)(1), or the owner of a facility the use of which is changed as described in subsection (a)(2), shall provide the Secretary written notice of the sale, transfer, or change not later than 10 days after the date on which the sale, transfer, or change occurs.

"(c)(1) The base amount that the United States is entitled to recover under subsection (a) is the amount bearing the same ratio to the then value (as determined by the agreement of the parties or in an action brought in the district court of the United States for the district in which the facility is situated) of so much of the facility as constituted an approved project or projects as the amount of the Federal participation bore to the cost of the remodeling, construction, expansion, or acquisition of the project or projects.

"(2)(A) The interest that the United States is entitled to recover under subsection (a) is the interest for the period (if any) described in subparagraph (B) at a rate (determined quarterly) equal to 150 percent of the average bond equivalent rate of the thirteen week Treasury bills auctioned at the end of the preceding calendar quarter.

"(B) The period referred to in subparagraph (A) is the period beginning—

"(i) if notice is provided as prescribed by subsection (b), 191 days after the date of the sale, transfer, or cessation, or

"(ii) if notice is not provided as prescribed by subsection (b), 11 days after the sale, transfer, or cessation,

and ending on the date the amount the United States is entitled to recover is collected.

"(d) The Secretary may waive the recovery rights of the United States under subsection (a) with respect to a facility (under such conditions as the Secretary may set in regulations) if the Secretary determines that there is good cause for waiving those rights.

"(e) The right of recovery of the United States under subsection (a) shall not prior to judgment constitute a lien on any facility.".

(d)(1) In the case of any facility that was or is constructed, remodeled, expanded, or acquired on or before the date of enactment of this Act (or within 180 days after the date of enactment of this Act), the period described in subsection (c)(2)(B)(i) of sections 723, 804, and 2115 of the Public Health Service Act (42 U.S.C. 293c, 296c, and 300aa-14) (as amended by the preceding subsections of this section) shall begin no earlier than 181 days after the date of enactment of this Act.

(2) The amendments enacted by the preceding subsections of this section shall not adversely affect other legal rights of the United States.

By Mr. STEVENS (for himself, Mr. MURKOWSKI, Mr. ABDNOR, Mrs. HAWKINS, Mr. D'AMATO, Mr. DURENBERGER, and Mr. ROTH):

S. 1645. A bill to delay a postal rate increase for subscription publications; to the Committee on Governmental Affairs.

DELAY OF POSTAL RATE INCREASE FOR SUBSCRIPTION PUBLICATIONS

Mr. STEVENS. Mr. President, today I am joining my friends in introducing legislation that will delay for 6 months the recently announced postal rate increase as it affects subscription publications. This rate increase for subsidized mailers was agreed upon by the Board of Governors of the U.S. Postal Service during their September Board meeting.

As prudent as the Board decision was, unforunately, it still means that rural and small newspaper as well as school classroom publication publishers will be faced with an increase in the cost of sending out subscriptions by anywhere from 45 to 60 percent in approximately 4 weeks. Mr. President, these publishers simply cannot adjust that quickly to such a major postal rate increase, coming on top of an increase they already adjusted to in February of this year.

This is not a bailout or government largess. It is simply a wise policy of orderly withdrawal of a Federal subsidy in such a fashion so as not to cause the undue collapse in one of this Nation's treasures, the small and rural newspapers, as well as the educational publications of America.

This bill would cost approximately $40 million. The newspaper publishers of this Nation are competent businessmen and women and they understand the essential nature of reducing this national deficit, and they are willing to help. But, let's not reward their willingness by putting them out of business.

Mr. Chairman, I ask unanimous consent to have the text of the bill printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1645

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, There are authorized to be appropriated sufficient sums so that the rates for mail under former section 4358 of title 39, United States Code, shall remain at step 14 on the rate phasing schedule under section 3626 of such title through March 31, 1986.

● Mr. D'AMATO. Mr. President, I rise today in support of legislation introduced by my good friend and colleague, Senator STEVENS. I commend him for his leadership on this issue.

This legislation responds to a recent decision by the Postal Service's Board of Governors that will have a tremendous impact on small newspapers and educational publications. The Board recently announced a rate increase, effective October 1, 1985, which will raise the cost of sending out subscriptions by 45 to 60 percent. This is on top of the rate increase which took effect in February of this year.

Mr. President, small newspapers and educational publications cannot adjust to such a rate increase on this short notice. They are locked into subscription rates based on expectations of substantially lower postal rates. Many of these outstanding publications could be forced out of business.

The bill which I am cosponsoring will delay this increase by 6 months. Although this legislation does not prevent this increase from occurring after that 6 month period, it will give small newspapers and education publications a chance to adjust their subscription rates and to budget for the increase.

I urge my colleagues to join in cosponsoring this legislation.●

By Mr. LEVIN:

S. 1646. A bill to amend chapter 34 of title 38, United States Code, to authorize the Administrator of Veterans' Affairs to afford educational assistance under such chapter to certain eligible veterans after the expiration of the 10-year delimiting period; to the Committee on Veterans' Affairs.

VETERANS EDUCATIONAL ASSISTANCE ACT

● Mr. LEVIN. Mr. President, today I am introducing legislation to provide for an extension of the eligiblity period for certain veterans to receive educational assistance. This bill addresses a situation faced by some of our veterans who are also married to members of the Armed Forces.

Congress has in the past recognized the sacrifices made by military spouses. The pressures of separation, frequent moves, and difficult living conditions are borne by military personnel and their families together. When military spouses are also former members of the military, they may face the additional problem of not being able to take full advantage of the educational benefits available to them by virtue of their having served in the Armed Forces.

Veterans affected by this legislation are currently given 10 years in which

to utilize their educational benefits. This 10-year period takes into account the fact that the restrictions of military life often prevent service men and women from attaining their educational goals during their years in the service. In some cases, however, the 10-year period is not enough. When eligible veterans are also married to a member of the Armed Forces, they continue under the same restrictions that they faced before leaving the military. These spouses may have left the service in the formal sense, but, for all practical purposes, they are still in the military. The military husband or wife may be assigned to a base in a remote area, too far from an institution offering a program appropriate to the veteran's educational objectives. If this situation continues for all or most of the 10-year eligibility period, it is hard to see how these veterans can utilize the educational benefits to which they are entitled.

Current law allows for an extension of the eligibility period only in cases of disability. The bill I am introducing today will allow the VA Administrator to extend the 10-year period for veterans who are also military spouses living with their husbands or wives and who are unable to pursue their chosen educational program because of where they live.

The Congressional Budget Office estimates that the costs of this bill would be insignificant. A relatively small number of people would be eligible for the extension for which the bill provides. But for those who would be affected, this bill will have a very significant impact. These veterans have served their country as members of the armed forces, and, in a sense, they continue to serve their country as military spouses. This legislation would help to ensure that they are not denied the opportunity to achieve their educational goals.

I ask unanimous consent that a copy of the bill be printed in the RECORD following my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1646

Be it enacted by the Senate and House of Represenatives of the United States of America in Congress assembled, That section 1662 of title 38, United States Code, is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following new subsection (e):

"(e)(1) Notwithstanding subsection (a) of this section, if—

"(A) an eligible veteran was last discharged or released from active duty on or after January 1, 1970,

"(B) the Administrator determines that, during the entire 10-year period applicable to the eligible veteran under such subsection—

"(i) the eligible veteran was married to a member of the Armed Forces and resided with the member at or near each permanent duty station to which the member was assigned during such period, and

"(ii) the eligible veteran was unable to pursue a program of education appropriate for the educational, professional, or vocational objective chosen by the eligible veteran because the veteran's residences were not within a reasonable commuting distance of an educational institution or training establishment (approved in accordance with chapter 36 of this title) offering such a program of education, and

"(C) the eligible veteran satisfies the application requirements prescribed in paragraph (2) of this subsection,

educational assistance may be afforded the eligible veteran under this chapter during the 4-year period beginning on the date the Administrator approves an application filed by the veteran as required under paragraph (2) of this subsection.

"(2) An eligible veteran described in paragraph (1) of this subsection shall submit to the Administrator an application under section 1671 of this title within one year after the earlier of—

"(A) the first date the veteran's spouse is assigned to a permanent duty station in the Armed Forces which is within a reasonable commuting distance of an educational institution or training establishment referred to in paragraph (1)(B)(ii) of this subsection;

"(B) the date the veteran's spouse is discharged or released from active duty;

"(C) the date the veteran begins to reside in a location which is within a reasonable commuting distance of an educational institution or training establishment referred to in paragraph (1)(B)(ii) of this subsection; or

"(D) the date the marriage to the veteran's spouse terminates.

An eligible veteran shall include with the application submitted under section 1671 of this title such additional information and documentation as the Administrator requires for the purpose of making determinations under paragraph (1) of this subsection.".

SEC. 2. The first sentence of section 1662(e)(2) of title 38, United States Code (as added by the first section), shall not apply in the case of any eligible veteran (as defined in section 1652(a)(1) of such title) who submits an application to the Administrator of Veterans' Affairs under section 1671 of such title within 1 year after the date of enactment of this Act.●

By Mr. LAUTENBERG (for himself and Mr. ROTH):

S. 1647. A bill to amend the Tariff Act of 1930 to enhance the protection of intellectual property rights; to the Committee on Finance.

INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT AMENDMENTS

● Mr. LAUTENBERG. Mr. President, I rise today to introduce the Intellectual Property Rights Enforcement Amendments of 1985, a bill to strengthen the enforcement of patents, copyrights, and trademarks in international trade. I am pleased to be joined by my distinguished colleague from Delaware [Mr. ROTH].

As the President's Commission on Industrial Competitiveness recently confirmed, America has no greater economic advantage than its technology and innovation. Yet, we will not reap the economic benefits of that technology unless we maintain an effective system for the protection of intellectual property rights, that is, patents, copyrights, and trademarks.

Developing new technology and innovation takes time, money and risk. The inventor needs an opportunity to reap a return, and our economy needs the opportunity to exploit American innovation.

Unfortunately, with increasing frequency, foreign firms are pirating American inventions, and then shipping those products back to the United States. The International Trade Commission estimated, back in 1982, that infringement of U.S. intellectual property cost Americans 131,000 jobs, in just five selected industrial sectors, and cost the Nation's businesses $5.5 billion in annual sales.

Since then, the problem has gotten worse. Piracy occurs in items as diverse as toy gremlins, optical waveguide fiber and amorphous metals.

One remedy is provided by section 337 of the Tariff Act of 1930. It gives the International Trade Commission the general power to exclude imports when the importer engages in "unfair methods of competition or unfair acts." The law has been used to keep out pirated products, but the law needs to be strengthened, and that is what our legislation would do.

Because the law was not designed specifically to protect intellectual property rights, it requires a complaining party to show that the imports threaten an efficient and economically operated domestic industry with destruction or substantial injury. Only then, can relief be granted.

Where trade affects the rights of patent, copyright, or trademark owners in the United States, there ought not be such obstacles to relief. To exclude certain imported goods, it should be enough that the articles infringe a patent, or are made abroad by the unauthorized use of a process that is patented here.

It should be enough that the imported article infringes a copyright, or that a product covered by a trademark was manufactured without the authority of the trademark holder. In other words, the bill covers the case of counterfeit trademarks. Much more controversial, and not addressed here, is the case in which products have bona fide trademarks, but enter through so-called gray market channels.

Intellectual property owners covered by the bill need not prove that a whole industry is threatened with destruction or substantial injury. Infringement is sufficient injury.

Also, an inventor would not have to prove that its industry is efficiently and economically operated. Indeed, some small high technology firms may not have the chance to get started,

and to become economical, before they are challenged by pirates.

The bill would make additional changes in section 337. It would require the ITC to act promptly on requests for relief pending the final resolution of a complaint. In cases where a key shipment of infringing goods is on its way, or a critical selling season is approaching, the failure of the ITC to act promptly inflicts harm on the intellectual property owners that is not easily remedied.

In order to overcome reluctance in the granting of temporary exclusion orders, the ITC is given the discretion to require the party seeking the order to put up a bond.

The bill also confirms the principle of finality of ITC judgments. There are cases, for example, where a party that is subject to an exclusion order for infringing a patent comes forth seeking a determination that it no longer infringes or seeks a modification of the order. The intellectual property owner is faced with additional litigation, to preserve the rights it so recently enforced.

The bill would confirm that the burden of proof in this subsequent proceeding is clearly on the party that was found in violation of the law. That party should be estopped from raising claims that could have been raised in the previous proceeding. It is my understanding that this is the rule today, but, the bill would enact this rule into statute.

The legislation also grants the ITC the power to order the forfeiture of articles. In principle, a general exclusion order is a powerful remedy, blocking the entry of goods, and forcing their return.

In reality, I am afraid, the Customs Service simply cannot and does not catch all infringing goods. When it does stop articles, it orders only that they be returned, and risks that there will be a second effort to import the goods, an effort that may elude detection. Forfeiture would make sure that pirates and counterfeiters do not have a second chance.

The legislation also speeds the granting of limited exclusion orders where a respondent defaults. The ITC may be justified in its current practice of establishing an adequate basis for a general exclusion order, even where respondents default, because of the broad nature of the remedy. However, where a party seeks a limited exclusion order, and a party defaults without good cause, relief should be forthcoming. Of course, securing a limited exclusion order when a party is in default should not preclude the complainant from securing a general exclusion order as well if a prima facie case is made.

Last, the bill increases the penalties for violation of cease and desist orders.

Mr. President, I should note that recently I joined Senator MATHIAS in introducing S. 1543, the Process Patent Amendment of 1985. Senator ROTH is also a cosponsor of that bill. It would make it a violation of domestic patent law to import, use or sell a product that is made abroad through the unauthorized use of a process that is patented here. Process patent reform is needed, to bring our law into line with that of other major industrial powers. It is needed to ensure the protection of our innovations, and the maintenance of incentives to innovate.

The bill we introduce today is a complement, and certainly not a substitute, for process patent law reform. The bill is a reflection of the breadth of the problem posed by the infringement of intellectual property rights, and the need for a variety of solutions.

Indeed, perhaps the greatest policymaking challenge is to increase respect of intellectual property in other nations, and in trade that does not involve the United States. When an American inventor's product is knocked off in one foreign country, and sold in another, U.S. exports are hurt.

We can condition certain trade benefits on adequate and effective intellectual property right protection. That was a provision of my bill last Congress, S. 2549, a provision that also found its way into the Trade and Tariff Act of 1984. But that approach depends on vigorous enforcement by an administration that may, unfortunately, be diverted by the pursuit of competing policy goals as well. In other words, Mr. President, a great deal of work needs to be done to raise international standards of intellectual property right protection.

I am not aware of any Member of this body who is not distressed by the flood of imports that have tipped our balance of trade. The causes of our trade imbalance are complex. Crafting a solution is not easy.

But, when the imports are pirated versions of American inventions, as is too often the case, there is no question that we should act and act firmly.

The legislation we introduce today will take action against unfair trade in counterfeit goods, pirated inventions, and copied works. I urge my colleagues to support this important amendment to our trade law.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1647

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Intellectual Property Rights Enforcement Amendments of 1985".

SEC. 2. (a) Subsection (a) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), is amended—

(1) by striking out "(a) Unfair" and inserting in lieu thereof "(a)(1) Unfair",

(2) by striking out "efficiently and economically operated",

(3) by striking out "prevent" and inserting in lieu thereof "impair or prevent", and

(4) by adding at the end thereof the following new paragraph:

"(2) For purposes of this section, the following acts in the importation of articles into the United States or in their sale are declared to be unfair and to have the effect or tendency to destroy or substantially injure an industry or to impair the establishment of an industry;

"(A) Unauthorized importation of an article which infringes a valid United States patent or the unauthorized sale of such an imported article.

"(B) Unauthorized importation of an article which—

"(i) was made, produced, processed, or mined under, or by means of, a process covered by a valid United States patent, and

"(ii) if made, produced, processed, or mined in the United States, would infringe a valid United States patent,

or the unauthorized sale of such an imported article.

"(C) Unauthorized importation of an article which infringes a valid United States copyright or the unauthorized sale of such an imported article.

"(D) Importation of an article which infringes a valid United States trademark, or the sale of such an imported article, if the manufacture or production of such imported article was unauthorized.".

(b) Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) is amended—

(1) by striking out "subsection (d) or (e)" in subsection (c) and inserting in lieu thereof "subsection (d), (e), (f), or (g)",

(2) by striking out "subsection (d), (e), or (f)" in subsection (c) and inserting in lieu thereof "subsection (d), (e), (f), (g), or (h)",

(3) by striking out "subsections (d), (e), and (f)" in subsection (c) and inserting in lieu thereof "subsection (d), (e), (f), (g), or (h)",

(4) by striking out "If" in the first sentence of subsection (e) and inserting in lieu thereof "(1) If",

(5) by adding at the end of subsection (e) the following new paragraph:

"(2) Any person may petition the Commission for the issuance of an order under this subsection. The Commission shall make a determination with regard to such petition by no later than the date that is 90 days after the date on which such petition is filed with the Commission. The Commission may require the petitioner to post a bond as a prerequisite to the issuance of an order under this subsection.",

(6) by striking out "In lieu of" in subsection (f)(1) and inserting in lieu thereof "In addition to, or in lieu of,",

(7) by inserting "twice" after "of $10,000 or" in subsection (f)(2),

(8) by redesignating subsections (g), (h), (i), and (j) as subsections (i), (j), (k), and (l), respectively,

(9) by inserting after subsection (f) the following new subsections:

"(g) FORFEITURE.—In addition to taking action under subsection (d) or (e), the Commission may issue an order providing that an article imported in violation of the provisions of this section be seized and forfeited

to the United States. The Commission shall notify the Secretary of the Treasury of any order issued under this subsection and, upon receipt of such notice, the Secretary shall enforce such order in accordance with the provisions of this Act.

"(h) DEFAULT.—If—

"(1) a complaint is filed against a person under this section,

"(2) such complaint and a notice of investigation are served on such person,

"(3) such person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice,

"(4) such person fails to show good cause why such person should not be found in default,

"(5) the facts alleged in the petition establish a violation of the provisions of this section, and

(6) the complainant seeks relief affecting such person,

the Commission shall presume the facts alleged in the complaint and shall, upon request, issue relief under this section affecting solely such person, unless, after considering the effect of such an order of relief upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the Commission finds that such an order of relief should not be issued.",

(10) by striking out "subsection (d), (e), or (f)" each place it appears in subsection (i), as redesignated by paragraph (8) of this subsection, and inserting in lieu thereof "subsection (d), (e), (f), (g), or (h)",

(11) by inserting "and no seizure shall be made of any article under subsection (g) until such determination becomes final if such bond is posted" after "becomes final" in subsection (i)(3), as so redesignated,

(12) by striking out "and (g)" in subsection (j), as so redesignated, and inserting in lieu thereof "and (i)",

(13) by striking out "notifies" in subsection (j), as so redesignated, and inserting in lieu thereof ", or order to seize, notifies",

(14) by striking out "Except" in subsection (j), as so redesignated, and inserting in lieu thereof "(1) Except",

(15) by adding at the end of subsection (j), as so redesignated, the following new paragraph:

"(2) If any person who has previously been found by the Commission to be in violation of this section petitions the Commission for a determination that the petitioner is no longer in violation of this section or for a modification or recision of an order under subsection (d), (e), (f), (g), or (h)—

"(A) the burden of proof in any proceeding before the Commission regarding such petition shall be on the petitioner, and

"(B) relief may be granted by the Commission with respect to such petition only on the basis of new evidence or evidence that could not have been presented at the prior proceeding.",

(16) by striking out "subsection (d), (e), or (f)" in subsection (k), as so redesignated, and inserting in lieu thereof "subsection (d), (e), (f), (g), or (h)", and

(17) by striking out "patent" each place it appears in subsection (k) and inserting in lieu thereof "patent, copyright, or trademark".

SEC. 3. The Act of July 2, 1940 (54 Stat. 724, chapter 515; 19 U.S.C. 1337a) is hereby repealed.●

● Mr. ROTH. Mr. President, today I join Mr. LAUTENBERG in introducing legislation which is designed to level the playing field with respect to the enforcement of U.S. intellectual property rights. As our economy and the international competitiveness of our industries become increasingly dependent upon U.S. ingenuity and technological innovation, it has become critical to ensure quick, effective, and meaningful protection for U.S. intellectual property, both at home and abroad. While it is becoming increasingly important to seek the recognition and enforcement of intellectual property rights by all nations, all such efforts must begin at home. Currently, it is more difficult for the U.S. owner of a U.S. patent, copyright, or trademark to secure relief against infringing imports than it is to secure relief against infringing products made in the United States. Although the laws were not intended to have this result, that is currently the effect.

Section 337 of the Tariff Act of 1930 has become one of the primary mechanisms for enforcing U.S. intellectual property rights against infringing imports, because it is frequently the only means of securing effective relief against infringing merchandise of foreign origin. However, because section 337 was originally designed to cover a broad range of unfair acts in the importation of goods into the United States, it contains several elements, in addition to an unfair act, which must be proven before relief will be issued. Many of these requirements make no sense in the context of the infringement of intellectual property. Moreover, these elements are not required by our international obligations, as evidenced by the fact that many of our trading partners do not require such showings for the exclusion of infringing imports.

In order to secure relief against infringing imports, the owner of U.S. intellectual property must prove, in addition to infringement: (a) The presence of a U.S. industry, (b) that the U.S. industry is efficiently and economically operated, (c) that the effect or tendency of the infringing imports is to destroy or substantially injure a U.S. industry, and (d) that the beneficial effect of the contemplated relief outweighs certain public interest considerations enumerated in the statute.

The bill which I propose today is designed to require that foreign companies seeking the benefits and profits of the U.S. market play by the same set of rules that our U.S. companies must observe.

The bill provides that injury under section 337 has been shown where a complainant has successfully shown infringement of a U.S. patent, copyright, or trademark—or the importation or sale of products made by a process which would infringe a U.S. process patent, if practiced in the United States.

The bill also contains several other amendments designed to make section 337 relief more meaningful to holders of U.S. intellectual property. First, the U.S. International Trade Commission [ITC], the agency responsible for administering the statute, is authorized to require that a complainant seeking a temporary exclusion order post a bond in the event that the complainant is not successful. This provision is intended to make it easier for the ITC to provide temporary relief when needed.

Second, the bill would require the ITC to act on requests for temporary relief within 90 days after a petition for such relief is filed. In cases involving seasonal markets, or where key shipments of infringing merchandise are pending, temporary relief should be used to prevent harm to the owners of the intellectual property in issue.

Third, the bill provides the ITC with greater flexibility in designing relief. The bill would allow the ITC to issue cease and desist orders in addition to exclusion orders, rather than in lieu of exclusion orders. The bill would also grant the ITC the authority to order forfeiture of merchandise found to be in violation of section 337. This would prevent harm to an intellectual property owner where goods have been imported during an investigation, or during the Presidential review period. The loss of a bond to the U.S. Government penalizes the importer, but provides no relief to the U.S. intellectual property owner if the goods are imported while under bond.

Fourth, the bill underscores the importance of the finality of ITC judgments, by providing that a party that has been found to be in violation of section 337 may seek an advisory opinion or modification of the order, only if the party first shows that it is presenting new evidence or evidence that could not have been presented during the course of the original investigation. It also codifies the requirement that a party seeking such action has the burden of proving that the product or process would not violate section 337.

A complainant that has successfully shown that a patent is valid and infringed should not, in the absence of a showing of good cause, be subject to the expense of additional proceedings to protect the value of the relief secured. This is the approach which the ITC has adopted in the past. This bill would strengthen those principles and enact such requirements into the statute.

Fifth, the bill provides that a complainant need not go to the expense of establishing a prima facie case in an administrative hearing, if the respondent or respondents are in default, and the complainant is seeking relief against only the defaulting parties.

Lastly, the bill increases the penalties for violation of cease and desist orders.

The Intellectual Property Rights Enforcement Amendments of 1985 is intended to be a complement, rather than a substitute for, legislation strengthening U.S. process patent laws.

In today's highly competitive international marketplace, we can no longer afford to pioneer new technology after new technology, while complacently allowing others to profit from the resources and efforts required for developing such innovation. This bill represents an important step in remedying this problem.●

By Mr. MURKOWSKI:

S.J. Res. 199. A joint resolution to designate the month of November 1985 as "National Elks Veterans Remembrance Month"; to the Committee on the Judiciary.

NATIONAL ELKS VETERANS REMEMBRANCE MONTH

● Mr. MURKOWSKI. Mr. President, as chairman of the Veterans' Affairs Committee, I rise to introduce a resolution to designate the month of November as "National Elks Veterans Remembrance Month."

There are over 1,650,000 members of the Benevolent and Protective Order of Elks assembled in 50 State groups. The Elks, founded in 1868, have always demonstrated a strong commitment to this Nation's veterans.

During their 1946 convention, the Elks National Service Commission made a solemn pledge, "So long as there are veterans in our hospitals, the Benevolent and Protective Order of Elks will never forget them." Today, the Elks and their ladies auxiliaries continue to honor that pledge, as they provide many services and programs to hospitalized veterans.

The Elks National Service Commission supervises activities in all 172 Veterans' Administration Medical Centers and nursing homes and domiciliaries. In addition to providing entertainment, occupational therapy assistance, and comfort to hospitalized veterans, the Elks have given financial support to hospital committees. For example, the Elks through hide gathering programs, donate tanned hides to the VA, the market value being in excess of $1 million annually.

In 1919, the Elks funded and built a 700-bed reconstruction hospital in Boston to receive wounded servicemen returning home after World War I. The hospital was donated to the Government and became a veterans' hospital.

During World War II, Elks lodges helped recruit aviation cadets and conducted courses that enabled thousands of men to qualify for flight training. When the Army needed help to recruit 45,000 men for Air Corps ground crews, the Elks recruited 97,000 men. The Elks have also been successful in recruitment drives for the Navy and for enlisting nurses for Veterans' Administration hospitals.

The Elks have recently gone nationwide with their "Adopt a Veteran Program." This program seeks volunteers to tend to hospitalized veterans who are without family or friends nearby. The volunteer makes regular visits, providing personal care items, letter writing, phone calls and in general tending to the veteran's needs in areas where the Government cannot. Last year, Elks "adopted" more than 15,000 veterans.

In recognition of the many services the Elks have rendered to this Nation's veterans, it seems fitting to designate the month of November as "National Elks Veterans Remembrance Month."

Given the spirit of volunteerism that has been sweeping across America in recent years—with much credit to the current Administration's Private Sector Initiatives Program—it is appropriate that we recognize one of this Nation's premier volunteer organizations. I urge my colleagues to join me in this effort, to say thank you to this fine organization, not only for the work they have done for veterans, but for the spirit they infused in America.

I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

There being no objection, the joint resolution was orderd to be printed in the RECORD, as follows:

S.J. RES. 199

Whereas there are one million, six hundred and fifty thousand members of the Benevolent and Protective Order of Elks, assembled in fifty State groups;

Whereas the fraternal and benevolent society, founded in 1868, has demonstrated a strong commitment to the veterans of the Nation;

Whereas the pledge of the Elks National Service Commission first made in 1946, remains, "so long as there are veterans in our hospitals, the Benevolent and Protective Order of Elks will never forget them.";

Whereas the Elks and the Ladies Auxiliaries of the Elks provide many services and programs to hospitalized veterans;

Whereas the Elks National Service Commission provides volunteer services and assistance in all one hundred and seventy-two Veterans' Administration medical centers, and nursing homes and domiciliaries;

Whereas in addition to providing entertainment, occupational therapy assistance, and comfort to hospitalized veterans, the Elks have given financial support to hospital committees and have engaged in recruitment activities for the Armed Services;

Whereas the numerous contributions of the Benevolent and Protective Order of Elks on behalf of the veterans of the National deserve greater public recognition and awareness; and

Whereas recognition of the Elks by the Congress and President through enactment of legislation declaring the month of November 1985 as "National Elks Veterans Remembrance Month", would serve to create greater public recognition and awareness of the contributions of the fraternal society, to express the appreciation of the Nation for the service of the Elks, to inspire more responsive care to veterans of the Nation, and to reinforce that duty to American veterans is the responsibility of all: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of November 1985 is designated as "National Elks Veterans Remembrance Month", and the President is authorized and requested to issue a proclamation calling upon all citizens, community leaders, interested organizations, and Government officials to observe such month with appropriate programs, ceremonies, and activities.●

ADDITIONAL COSPONSORS

S. 274

At the request of Mr. DENTON, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 274, a bill to provide for the national security by allowing access to certain Federal criminal history records.

S. 418

At the request of Mr. GRASSLEY, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of S. 418, a bill to amend the Internal Revenue Code of 1954 to exclude certain net capital gain of insolvent taxpayers from the alternative minimum tax.

S. 419

At the request of Mr. GRASSLEY, the name of the Senator from North Carolina [Mr. EAST] was added as a cosponsor of S. 419, a bill to amend the Internal Revenue Code of 1954 to allow a deduction for one-half of the expenses paid by a self-employed taxpayer for individual health insurance premiums.

S. 491

At the request of Mr. QUAYLE, the name of the Senator from California [Mr. WILSON] was added as a cosponsor of S. 491, a bill to improve debt-collection activities and default recoveries and to reduce collection costs and program abuse under student loan programs administered by the Department of Education, and for other purposes.

S. 637

At the request of Mr. ZORINSKY, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 637, a bill to amend the Railroad Retirement Act of 1974 to allow a worker to be employed in any nonrailroad employment and still qualify for an annuity, subject to current deductions in the tier 1 benefit on account of work and new deductions in the tier 2 benefit if the employment is for his last nonrailroad employer.

S. 777

At the request of Mr. HEINZ, the names of the Senator from Massachu-

setts [Mr. KERRY], the Senator from Hawaii [Mr. MATSUNAGA], and the Senator from Arkansas [Mr. PRYOR] were added as cosponsors of S. 777, a bill to amend the Tax Equity and Fiscal Responsibility Act of 1982 to extend hospice benefits under the Medicare program for an additional 3 years.

S. 779

At the request of Mr. HEINZ, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 779, a bill to amend the Internal Revenue Code of 1954 to allow a credit against tax for expenses incurred in the care of elderly family members.

S. 896

At the request of Mr. GRASSLEY, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 896, a bill to amend the Internal Revenue Code of 1954 to apply rural electric cooperative plans to the provisions relating to cash or deferred arrangements.

S. 980

At the request of Mr. TRIBLE, the name of the Senator from North Carolina [Mr. EAST] was added as a cosponsor of S. 980, a bill to amend title I of the Housing and Community Development Act of 1974.

S. 985

At the request of Mr. GRASSLEY, the name of the Senator from Nebraska [Mr. ZORINSKY] was added as a cosponsor of S. 985, a bill to protect the rights of victims of child abuse.

S. 1084

At the request of Mr. GOLDWATER, the name of the Senator from Iowa [Mr. HARKIN], the Senator from New Mexico [Mr. DOMENICI], the Senator from Pennsylvania [Mr. SPECTER], and the Senator from Missouri [Mr. EAGLETON] were added as cosponsors of S. 1084, a bill to authorize appropriations of funds for activities of the Corporation for Public Broadcasting, and for other purposes.

At the request of Mr. DURENBERGER, his name was added as a cosponsor of S. 1084, supra.

S. 1198

At the request of Mr. MITCHELL, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S. 1198, a bill to establish in the Environmental Protection Agency a program of research on indoor air quality, and for other purposes.

S. 1249

At the request of Mr. HEINZ, the name of the Senator from Hawaii [Mr. MATSUNAGA] was added as a cosponsor of S. 1249, a bill to amend titles XVIII and XIX of the Social Security Act to provide for coverage of respiratory care services for ventilator-dependent individuals under medicare and medicaid.

S. 1381

At the request of Mr. QUAYLE, the names of the Senator from Tennessee (Mr. GORE), the Senator from Mississippi (Mr. COCHRAN), and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of S. 1381, A bill to amend the General Education Provisions Act to improve and expand the Assessment Policy Committee.

S. 1439

At the request of Mr. DODD, the name of the Senator from Rhode Island (Mr. PELL) was added as a cosponsor of S. 1439, A bill to amend title 39, United State Code, to provide that change-of-address order forms submitted to the Postal Service may be furnished to the appropriate State authority for purposes relating to voter registration.

S. 1450

At the request of Mr. HEINZ, the name of the Senator from Maryland [Mr. SARBANES], and the Senator from Hawaii [Mr. MATSUNAGA] were added as cosponsors of S. 1450, a bill to prohibit the Secretary of Health and Human Services from changing reimbursement levels or methodologies for home health services under the Medicare Program prior to October 1, 1986, or during a freeze period.

S. 1504

At the request of Mr. ROCKEFELLER, the name of the Senator from Michigan [Mr. LEVIN], and the Senator from Alabama [Mr. HEFLIN] were added as cosponsors of S. 1504, a bill to assure that administrative law judges making determinations under the Black Lung Benefits Act receive compensation at a rate not less than that prescribed for GS-16 under section 5332 of title 5, United States Code.

S. 1540

At the request of Mr. DODD, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of S. 1540, a bill providing a statutory basis for a budget that requires that any increase in outlays be financed by an equivalent increase in revenues, and for other purposes.

S. 1570

At the request of Mr. NICKLES, the name of the Senator from Wisconsin [Mr. KASTEN] was added as a cosponsor of S. 1570, a bill to amend the Fair Labor Standards Act of 1938 to exclude the employees of States and political subdivisions of States from the provisions of that act relating to maximum hours, to clarify the application of that act to volunteers, and for other purposes.

S. 1600

At the request of Mr. HEINZ, the name of the Senator from Wisconsin [Mr. PROXMIRE] was added as a cosponsor of S. 1600, a bill to provide that certain of the Social Security trust funds be excluded from the Federal budget process for fiscal years beginning on or after October 1, 1985, and to clarify that specifications and directions with respect to such trust funds may not be included in any concurrent resolution on the budget adopted with respect to fiscal years beginning after such date.

S. 1629

At the request of Mr. GRASSLEY, the name of the Senator from Delaware [Mr. ROTH] was added as a cosponsor of S. 1629, a bill to amend the Tariff Act of 1930 to treat certain agricultural products as like products for purposes of antidumping and countervailing duty investigations.

SENATE JOINT RESOLUTION 3

At the request of Mr. THURMOND, the names of the Senator from Oklahoma [Mr. BOREN] was added as a cosponsor of Senate Joint Resolution 3, a joint resolution proposing an amendment to the Constitution of the United States relating to voluntary school prayer.

SENATE JOINT RESOLUTION 175

At the request of Mr. PROXMIRE, the names of the Senator from Michigan [Mr. LEVIN], the Senator from New York [Mr. MOYNIHAN], the Senator from Indiana [Mr. LUGAR], and the Senator from New Jersey [Mr. LAUTENBERG] were added as a cosponsors of Senate Joint Resolution 175, a joint resolution to designate the week of August 25, 1985, through August 31, 1985, as "National CPR Awareness Week."

SENATE JOINT RESOLUTION 184

At the request of Mr. DENTON, the names of the Senator from Oklahoma [Mr. NICKLES], the Senator from Georgia [Mr. MATTINGLY], the Senator from Mississippi [Mr. COCHRAN], and the Senator from Hawaii [Mr. INOUYE] were added as a cosponsors of Senate Joint Resolution 184, a joint resolution to authorize the Korean War Memorial, Inc., to erect a memorial in the District of Columbia or its environs.

SENATE JOINT RESOLUTION 188

At the request of Mrs. KASSEBAUM, the names of the Senator from Arkansas [Mr. BUMPERS], the Senator from North Dakota [Mr. ANDREWS], the Senator from Kansas [Mr. DOLE], the Senator form Hawaii [Mr. MATSUNAGA], the Senator from Nebraska [Mr. ZORINSKY], and the Senator from Indiana [Mr. LUGAR] were added as cosponsors of Senate Joint Resolution 188, a joint resolution to designate July 6, 1986, as "National Air Traffic Control Day."

SENATE CONCURRENT RESOLUTION 64—RELATING TO A NATIONAL COMMISSION ON THE FARM CREDIT SYSTEM

Mr. ABDNOR submitted the following concurrent resolution; which was referred to the Committee on Governmental Affairs:

S. CON. RES. 64

Whereas American agriculture remains in a severe economic recession;

Whereas this recession has jeopardized the financial condition of both lenders and borrowers of credit;

Whereas the Farm Credit System is a lender of one-third of the credit needs of American agriculture; and

Whereas investor confidence in the Farm Credit System securities is being eroded: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that—

(1) the President should, as soon as possible, form a non-partisan National Commission on the Farm Credit System to recommend reforms which will address the issues of ensuring adequate credit supplies and fair interest rates to farmers and ranchers,

(2) such Commission should transmit its recommendations to the President and the Congress within three weeks from the date of the passage of this resolution and thereafter at such times as the Commission deems appropriate, and

(3) such Commission should be composed of the Chairman or his selected representative of the House Committee on Agriculture, the House Committee on Banking, Finance and Urban Affairs, the Senate Committee on Agriculture, Nutrition, and Forestry, and the Senate Committee on Banking, Housing, and Urban Affairs; the Secretaries of Agriculture and Treasury or their representatives; the Chairman, Board of Governors of the Federal Reserve System or his representatives; the Governor of the Farm Credit Administration or his designee; one representative of each of the American Bankers Association and the Independent Bankers Association; one representative from a local entity within the Farm Credit System, and such other representative in the field of agricultural finance as the President deems appropriate to name. Such Commission shall not exceed twelve (12) persons.

Mr. ABDNOR. Mr. President, I rise to submit a concurrent resolution expressing the sense of the Congress that the President should form a National Commission on the Farm Credit System. This Commission would provide recommendations to the Congress within 3 weeks concerning necessary reforms to the farm credit system to ensure adequate credit supplies and fair interest rates to farmers and ranchers.

It is essential, Mr. President, that we rapidly bring together the best and most informed minds in the country to address this farm credit crisis. Prices are down, exports are down, land values are down, farm income is down, and now the farmers' and ranchers' primary source of financing is on the brink of collapse. Not since the Great Depression have American farmers and ranchers more needed or deserved the attention and understanding of their representative Government.

This is not a partisan issue, Mr. President. Without credit, farmers will simply be unable to put in next year's crop and that will yield an immeasurable tragedy for this Nation and millions of others in foreign countries dependent upon the United States as a supplier of food.

Let's get on with the job—now.

AMENDMENTS SUBMITTED

IMMIGRATION CONTROL ACT

HEINZ (AND OTHERS) AMENDMENT NO. 602

Mr. HEINZ (for himself, Mrs. HAWKINS, Mr. SPECTER, Mr. SASSER, Mr. ADBNOR, Mr. ANDREWS, Mr. DENTON, Mr. RIEGLE, Mr. DECONCINI, and Mr. WILSON) proposed an amendment to amendment No. 600 proposed by Mrs. HAWKINS to the bill (S. 1200) to amend the Immigration and Nationality Act to effectively control unauthorized immigration to the United States, and for other purposes; as follows:

At the end of the amendment, add the following:

SEC. . POLICY TOWARD SOCIAL SECURITY TRUST FUNDS.

(a) FINDINGS.—The Congress finds that—

(1) public confidence in the Social Security system has been undermined by the acrimonious debates over deficit reduction;

(2) including Social Security Trust Funds in the Unified Federal Budget masks the true size of the federal deficit;

(3) Social Security is wholly funded by a separate payroll tax, is running a surplus, and does not contribute to the federal deficit;

(4) it is time to protect the integrity of both the Social Security program and the federal budget process by separating the two; and

(5) removing Social Security Trust Funds from the Unified Federal Budget will enable Congress to proceed with the responsibility of solving our massive budget deficit.

(b) POLICY.—It is the sense of the Senate that Congress should separate the Social Security Trust Funds from the Unified Federal Budget at the earliest possible date.

KENNEDY AMENDMENT NO. 603

Mr. KENNEDY proposed an amendment to amendment No. 600 proposed by Mrs HAWKINS to the bill S. 1200, supra; as follows:

At the end of subsection (c) of the amendment, add the following new paragraph:

(4) Such sums as may be necessary and authorized for the Immigration and Naturalization Services to carry out the purposes of the section.

KENNEDY (AND BINGAMAN) AMENDMENT NO. 604

Mr. KENNEDY (for himself and Mr. BINGAMAN) proposed an amendment to the bill S. 1200, supra; as follows:

On page 118, line 14, strike out "five" and insert in lieu thereof "three".

On page 119, line 11, strike out "five" and insert in lieu thereof "three".

On page 121, between lines 6 and 7, insert the following:

(d) TERMINATION DATE FOR EMPLOYER SANCTIONS.—(1) The provisions of section 274A of the Immigration and Nationality Act shall terminate 30 calendar days after receipt of the last report required to be transmitted under subsection (b), if—

(A) the Comptroller General determines, and so reports in such report, that a widespread pattern of discrimination has resulted against citizens or nationals of the United States or against eligible workers seeking employment, the sole result of the implementation of employer sanctions; and

(B) there is enacted, within such period of 30 calendar days, a joint resolution stating in substance that the Congress approves the findings of the Comptroller General contained in such report.

(2) Any joint resolution referred to in clause (B) of paragraph (1) shall be considered in the Senate in accordance with subsection (f).

(e) EXPEDITED PROCEDURES IN THE HOUSE OF REPRESENTATIVES.—For the purpose of expediting the consideration and adoption of joint resolutions under subsection (d), a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(f) EXPEDITED PROCEDURES IN THE SENATE.—(1) For purposes of subsection (d), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated.

(2) Paragraphs (3) and (4) of this subsection are enacted—

(A) as an exercise of the rulemaking power of the Senate and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of joint resolutions referred to in subsection (d), and supersede other rules of the Senate only to the extent that such paragraphs are inconsistent therewith; and

(B) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner as in the case of any other rule of the Senate.

(3)(A) If the committee of the Senate to which has been referred a joint resolution relating to the report described in subsection (d) has not reported such joint resolution at the end of ten calendar days after its introduction, not counting any day which is excluded under paragraph (1) of this subsection, it is in order to move either to discharge the committee from further consideration of the joint resolution or to discharge the committee from further consideration of any other joint resolution introduced with respect to the same report which has been referred to the committee, except that no motion to discharge shall be in order after the committee has reported a joint resolution with respect to the same report.

(B) A motion to discharge under subparagraph (A) of this paragraph may be made only by a Senator favoring the joint resolution, is privileged, and debate thereon shall be limited to not more than 1 hour, to be di-

vided equally between those favoring and those opposing the joint resolution, the time to be divided equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(4)(A) A motion in the Senate to proceed to the consideration of a joint resolution shall be privileged. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the Senate on a joint resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(C) Debate in the Senate on any debatable motion or appeal in connection with a joint resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the joint resolution, except that in the event the manager of the joint resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a joint resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(D) A motion in the Senate to further limit debate on a joint resolution, debatable motion, or appeal is not debatable. No amendment to, or motion to recommit, a joint resolution is in order in the Senate.

KENNEDY (AND BINGAMAN) AMENDMENT NO. 605

Mr. KENNEDY (for himself and Mr. BINGAMAN) proposed an amendment to the bill S. 1200, supra; as follows:

Beginning on page 68 with line 7, strike out all through line 7 on page 93 and insert in lieu thereof the following:

TITLE II—LEGALIZATION

LEGALIZATION

SEC. 201. (a) Chapter 5 of title II is amended by inserting after section 245 (8 U.S.C. 1255) the following new section:

"ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS BEFORE JANUARY 1, 1981, TO THAT OF PERSONS ADMITTED FOR TEMPORARY OR PERMANENT RESIDENCE

"SEC. 245A. (a) The Attorney General may, in his discretion and under such regulations as he shall prescribe, adjust the status of an alien to that of an alien lawfully admitted for permanent residence if—

"(1) the alien applies for such adjustment during the twelve-month period beginning on a date (not later than 180 days after the date of enactment of this section) designated by the Attorney General,

"(2)(A) the alien (other than an alien who entered as a nonimmigrant) establishes that he entered the United States prior to January 1, 1977, and has resided continuously in the United States in an unlawful status from January 1, 1977, through the date of enactment of the Immigration Reform and Control Act of 1985, or

"(B) the alien entered the United States as a nonimmigrant before January 1, 1977, the alien's period of authorized stay as a nonimmigrant expired before January 1, 1977, through the passage of time or the alien's unlawful status was known to the Government as of January 1, 1977, and the alien has resided continuously in the United States in an unlawful status from January 1, 1977, through the date of enactment of the Immigration Reform and Control Act of 1985, and

"(C) if the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof;

"(3) the alien was continuously physically present in the United States since the date of the enactment of the Immigration Reform and Control Act of 1985; and

"(4) the alien—

"(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(3),

"(B) has not been convicted of any felony or of three or more misdemeanors committed in the United States,

"(C) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion, and

"(D) registers under the Military Selective Service Act, if the alien is required to be so registered under that Act.

Notwithstanding paragraph (1), an alien who (at any time during the one-year period described in paragraph (1)) is the subject of an order to show cause issued under section 242, must make application under such paragraph not later than the end of the thirty-day period beginning either on the first day of such one-year period or on the date of the issuance of such order, whichever day is later. An alien shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of paragraph (3) by virtue of a brief, casual, and innocent absence from the United States.

"(b)(1) The Attorney General may, in his discretion and under such regulations as he shall prescribe, adjust the status of an alien to that of an alien lawfully admitted for temporary residence if—

"(A) the alien applies for such adjustment during the twelve-month period described in subsection (a)(1);

"(B)(i) the alien (other than an alien who entered as a nonimmigrant) establishes that he entered the United States prior to January 1, 1981, and has resided continuously in the United States in an unlawful status from January 1, 1981, through the date of enactment of the Immigration Reform and Control Act of 1985; or

"(ii) the alien entered the United States as a nonimmigrant before January 1, 1981, the alien's period of authorized stay as a nonimmigrant expired before January 1, 1981, through the passage of time or the alien's unlawful status was known to the Government as of January 1, 1981, and the alien has resided continuously in the United States in an unlawful status from January 1, 1981, through the date of enactment of the Immigration Reform and Control Act of 1985; and

"(iii) if the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof;

"(C) the alien has been continuously physically present in the United States since the date of the enactment of the Immigration Reform and Control Act of 1985; and

"(D) the alien—

"(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(3),

"(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States,

"(iii) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion, and

"(iv) registers under the Military Selective Service Act, if the alien is required to be so registered under that Act.

For purposes of this subsection, an alien in the status of a Cuban and Haitian entrant described in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422 shall be considered to have entered the United States and to be in an unlawful status in the United States. Notwithstanding paragraph (1), an alien who (at any time during the one-year period described in subparagraph (A)) is the subject of an order to show cause issued under section 242, must make application under such paragraph not later than the end of the thirty-day period beginning either on the first day of such one-year period or on the date of the issuance of such order, whichever day is later. An alien shall not be considered to have failed to maintained continuous physical presence in the United States for purposes of subparagraph (C) by virtue of a brief, casual, and innocent absence from the United States.

"(2) During the period an alien is in the lawful temporary resident status granted under paragraph (1)—

"(A) the Attorney General shall, in accordance with regulations, permit the alien to return to the United States after such brief and casual trips abroad as reflect an intention on the part of the alien to adjust to lawful permanent resident status under paragraph (1) and after brief temporary trips abroad occasioned by a family obligation involving an occurrence such as the illness or death of a close relative or other family need, and

"(B) the Attorney General shall grant the alien authorization to engage in employment in the United States and provide to that alien an 'employment authorized' endorsement or other appropriate work permit.

"(3) The Attorney General, in his discretion and under such regulations as he may prescribe, may adjust the status of any alien provided lawful temporary resident status under paragraph (1) to that of an alien lawfully admitted for permanent residence if the alien—

"(A) applies for such adjustment during the 12-month period beginning with the first day of the twenty-fifth month that begins after the date the alien was granted such temporary resident status;

"(B) establishes that he has continuously resided in the United States since the date the alien was granted such temporary resident status;

"(C)(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(3), and

"(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States; and

"(D) can demonstrate that he either (i) meets the requirements of section 312 (relating to minimal understanding of ordinary English and a knowledge and understanding

of the history and government of the United States), or (ii) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States. An alien shall not be considered to have lost the continuous residence referred to in subparagraph (B) by reason of an absence from the United States permitted under paragraph (2)(A). The Attorney General may, in his discretion, waive all or part of the requirements of subparagraph (D) in the case of an alien who is 65 years of age or older.

"(4) The Attorney General shall provide for termination of temporary resident status granted an alien under this subsection—

"(A) if it appears to the Attorney General that the alien was in fact not eligible for such status,

"(B) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (c)(3), or (ii) is convicted of any felony or three or more misdemeanors committed in the United States, or

"(C) at the end of the thirty-seventh month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (3) and such application has not been denied.

"(c)(1)(A) The Attorney General shall provide that applications for adjustment of status under subsection (a) or under subsection (b)(1) may be filed—

"(i) with the Attorney General, or

"(ii) with an organization or person designated under subparagraph (B), but only if the applicant consents to the forwarding of the application to the Attorney General.

"(B) For purposes of assisting in the program of legalization provided under this section, the Attorney General shall designate qualified voluntary organizations and other qualified State, local, and community organizations and may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under Public law 89-732 or under Public Law 94-145.

"(C) Each organization or person designated under subparagraph (B) must agree to forward to the Attorney General applications filed with it in accordance with subparagraph (A)(ii) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such organization or person may make a determination required by this section to be made by the Attorney General.

"(D) Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

"(E) The Attorney General shall provide for a schedule of fees to be charged for the filing of applications for adjustment under subsection (a) or under subsection (b)(1). The Attorney General shall deposit payments received under the preceding sentence in a separate account and amounts in such account shall be available, without fiscal year limitation, only to cover administrative expenses incurred in connection with the review of applications filed under this section.

"(2) The numerical limitations of sections 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

"(3) The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not be applicable in the determination of an alien's admissibility under subsections (a)(4)(A), (b)(1)(D)(i), (b)(3)(C)(i), and (b)(4)(B)(i), and the Attorney General, in making such determination with respect to a particular alien, may waive any other provision of such section other than paragraph (9), (10), (15) (except as it applies to the adjustment to lawful temporary resident status under subsection (a)), (23) (except for so much of such paragraph as relates to a single offense of simple possession of thirty grams or less of marihuana), (27), (28), (29), or (33), for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. For purposes of this section, an alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(15) if the alien demonstrates a history of employment in the United States evidencing self-support without receipt of public cash assistance.

"(4) During the six-month period beginning on the date of the enactment of this section, the Attorney General, in cooperation with qualified organizations and governments designated under paragraph (1) and the Secretary of Labor, shall broadly disseminate information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits.

"(5)(A) The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1) and who can establish a prima facie case of eligibility to have his status adjusted under subsection (a) or subsection (b)(1) (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

"(i) may not be deported, and

"(ii) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized" endorsement or other appropriate work permit.

"(B) The Attorney General shall provide that in the case of an alien who presents an application for adjustment of status under subsection (a) or subsection (b)(1) during such application period which application establishes a prima facie case of eligibility to have his status adjusted under such subsection, and until a final administrative determination on the application has been made in accordance with this section, the alien—

"(i) may not be deported, and

"(ii) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit.

"(6) Notwithstanding the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et. seq.), the Attorney General is hereby authorized to expend from the appropriation provided for the administration and enforcement of this Act, such amounts as may be necessary for the leasing or acquisition of property in the fulfillment of this section. This authority shall end two years after the date of the enactment of this Act.

"(d)(1) For the purposes of subsection (a), (b)(1), or (b)(3), an alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside the United States as a result of a departure under an order of deportation.

"(2) Any period of time during which an alien is outside the United States pursuant to the advance parole procedures of the Service shall not be considered as part of the period of time during which an alien is outside the United States for purposes of this section.

"(e)(1) During the five-year period beginning on the date an alien is granted lawful temporary resident status granted under subsection (b)(1) and during the three-year period beginning on the date an alien is granted lawful permanent resident status under subsection (2), and notwithstanding any other provision of law—

"(A) except as provided in paragraph (2), the alien is not eligible for—

"(i) any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government,

"(ii) medical assistance under a State plan approved under title XIX of the Social Security Act, and

"(iii) assistance under the Food Stamp Act of 1977, and

"(B) a State or political subdivision therein may, to the extent consistent with subparagraph (A), provide that the alien is not eligible for the programs of financial or medical assistance furnished under the law of that State or political subdivision.

Programs authorized under the National School Lunch Act, the Child Nutrition Act of 1966, the Vocational Education Act of 1963, chapter 1 of the Education Consolidation and Improvement Act of 1981, the Headstart-Follow Through Act, the Job Training Partnership Act, and subparts 4 and 5 of part A of title IV of the Higher Education Act of 1965 shall not be construed to be programs of financial assistance referred to in subparagraph (A)(1). Programs authorized under the Public Health Service Act And title V of the Social Security Act shall not be construed to be programs of financial assistance refered to in subparagraph (A)(i).

"(2) Paragraph (1) shall not apply—

"(A) to a Cuban and Haitian entrant (as defined in paragraph (1) of (2)(A) of section 501(e) of Public Law 96-422, as in effect on April 1, 1983);

"(B) in the case of assistance furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act), or

"(C) in the case of medical assistance (i) for care and services provided to an alien who is under 18 years of age, (ii) for emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act) or (iii) for services described in section

1916(a)(2)(B) of such Act (relating to services for pregnant women).

The eligibility, comparability, and any other State plan requirements of title XIX of the Social Security Act are superseded to the extent required to restrict the medical assistance in the manner described in subparagraph (C) and paragraph (1)(A)(ii). The Secretary of Health and Human Services, in coordination with the Attorney General, shall promulgate regulations in order to carry out subparagraphs (B) and (C).

"(3) For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96-122), assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

"(f)(1) The Attorney General, after consultation with the Committees on the Judiciary of the House of Representatives and of the Senate and with organizations and persons designated under subsection (c)(1)(B), shall prescribe—

"(A) regulations establishing a definition of the term 'resided continuously', as used in this section, and the evidence needed to establish that an alien has resided continuously in the United States for purposes of this section, and

"(B) such other regulations as may be necessary to carry out this section.

"(2) In prescribing regulations described in paragraph (1)(A), the Attorney General shall—

"(A) specify individual periods, and aggregate periods, of absence from the United States which will be considered to break a period of continuous residence in the United States and shall take into account absences due merely to brief and casual trips abroad;

"(B) provide for a waiver, in the discretion of the Attorney General, of the periods specified under subparagraph (A) in the case of an absence from the United States due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien;

"(C) require that continuous residence in the United States must be established through documents, together with independent corroboration of the information contained in such documents; and

"(D) require that the documents provided under subparagraph (C) be employment-related if employment-related documents with respect to the alien are available to the applicant.

"(3) Regulations prescribed under this section may be prescribed to take effect on an interim final basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

"(g)(1) There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

"(2) The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination. Such administrative appellate review shall be based upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

"(3)(A) There shall be no judicial review of such a determination, unless the applicant has exhausted the administrative review described in paragraph (2).

"(B) There shall be judicial review of such a denial only in the judicial review of an order of deportation under section 106. Such review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive.

"(h) Notwithstanding any other provision of law, the retired or retainer pay of a member or former member of the Army Forces of the United States or the annuity of a retired employee of the Federal Government shall not be reduced while such individual is temporarily employed by the Service for a period of not to exceed fifteen months to perform duties in connection with the adjustment of status of aliens under this section.".

(b) The table of contents for chapter 5 of title II is amended by inserting after the item relating to section 245 the following new item:

"Sec. 245A. Adjustment of status of certain entrants before January 1, 1981, to that of persons admitted for temporary or permanent residence.".

(c) For reports on the legalization program provided under the amendment made by subsection (a), see section 405 of this Act.

CUBAN-HAITIAN ADJUSTMENT

SEC. 202. (a) The status of any alien described in subsection (b) may be adjusted by the Attorney General, in the Attorney General's discretion and under such regulations as the Attorney General may prescribe, to that of an alien lawfully admitted for permanent residence if—

(1) the alien applies for such adjustment within two years after the date of the enactment of this Act;

(2) the alien is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for exclusion specified in paragraphs (14), (15), (20), (21), (25), and (32) of section 212(a) of the Immigration and Nationality Act shall not apply;

(3) the alien is not an alien described in section 243(h)(2) of such Act;

(4) the alien is physically present in the United States on the date the application for such adjustment is filed; and

(5) the alien has continuously resided in the United States since January 1, 1982.

(b) The benefits provided by subsection (a) shall apply to any alien—

(1) who has received an immigration designation as a Cuban/Haitian Entrant (Status Pending) as of the date of the enactment of this Act, or

(2) who is a national of Cuba or Haiti, who arrived in the United States before January 1, 1982, with respect to whom any record was established by the Immigration and Naturalization Service before January 1, 1982, and who (unless the alien filed an application for asylum with the Immigration and Naturalization Service before January 1, 1982) was not admitted to the United States as a nonimmigrant.

(c) An alien who, as of the date of the enactment of this Act, is a Cuban and Haitian entrant for the purpose of section 501 of Public Law 96-422 shall continue to be considered such an entrant for such purpose without regard to any adjustment of status effected under this section.

(d) Upon approval of an alien's application for adjustment of status under subsection (a), the Attorney General shall establish a record of the alien's admission for permanent residence as of January 1, 1982.

(e) When an alien is granted the status of having been lawfully admitted for permanent residence pursuant to this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under this Act and the Attorney General shall not be required to charge the alien any fee.

(f) Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act shall apply in the administration of this section. Nothing contained in this section shall be held to repeal, amend, alter, modify, effect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.

STATE LEGALIZATION IMPACT-ASSISTANCE GRANTS

SEC. 203. (a)(1) There are authorized to be appropriated for grants (and related Federal administrative costs) to carry out this section $1,000,000,000 (less the amount described in paragraph (2)) for fiscal year 1986 and for each of the three succeeding fiscal years.

(2)(A) Subject to subparagraphs (B) and (C), the amount described in this paragraph for a fiscal year is equal to the amount estimated to be expended by the Federal Government in the fiscal year for the programs of financial assistance, medical assistance, and assistance under the Food Stamp Act of 1977 for aliens who would not be eligible for such assistance under paragraph (1)(A) of section 249A(e) of the Immigration and Nationality Act but for the provisions of subparagraphs (B) and (C) of paragraph (2) of such section.

(B) For purposes of subparagraph (A), with respect to—

(i) fiscal year 1986, the amount estimated to be expended is equal to $30,000,000, and

(ii) fiscal year 1987, the amount estimated to be expended is equal to $300,000,000. For subsequent fiscal years, the amount estimated to be expended shall be such estimate as contained in the annual fiscal budget submitted for that year to the Congress by the President.

HART (AND LEVIN) AMENDMENT NO. 606

Mr. HART (for himself and Mr. LEVIN) proposed an amendment to the bill S. 1200, supra; as follows:

On page 13, line 4, before the period insert "AND UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES".

On page 13, line 7, strike out "section" and insert in lieu thereof "sections".

On page 33, line 12, strike out all that follows the first period.

On page 33, after line 12, insert the following:

"UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

"SEC. 274B. (a) PROHIBITION OF DISCRIMINATION BASED ON NATIONAL ORIGIN OR IMMIGRATION STATUS.—

"(1) GENERAL RULE.—It is an unfair immigration-related employment practice for a

person or other entity to engage in a pattern or practice of discrimination against individuals (other than unauthorized aliens, described in section 274A(h)(2)) with respect to the hiring, or recruitment or referral for a fee, of individuals for employment—

"(A) because of such individual's national origin, or

"(B) in the case of a citizen or intending citizen (as defined in paragraph (3)), because of their status as United States citizens, as aliens lawfully admitted for permanent residence, as aliens admitted as refugees, as aliens granted asylum, or as aliens with lawful temporary resident status granted under section 202 of the Immigration Reform and Control Act of 1985.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

"(A) a person or other entity that employs three or fewer employees,

"(B) a person's or entity's discrimination because of an individual's national origin if the discrimination with respect to that person or entity and that individual is covered under section 703 of the Civil Rights Act of 1964, or

"(C) discrimination under paragraph (1)(B) which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

"(3) DEFINITION OF CITIZEN OR INTENDING CITIZEN.—As used in paragraph (1), the term citizen or intending citizen' means an individual who—

"(A) is a citizen or national of the United States, or

"(B) is an alien who—

"(i) is lawfully admitted for permanent residence, is admitted as a refugee under section 207, is granted asylum under section 208, or is granted lawful temporary resident status under section 202 of the Immigration Reform and Control Act of 1985, and

"(ii) evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen;

but does not include an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after the date of the enactment of this section.

"(b) COMPLAINTS OF VIOLATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), any person alleging that the person is adversely affected directly by an unfair immigration-related employment practice or an officer of the Service alleging that an unfair immigration-related employment practice has occurred or is occurring may file a charge respecting such practice or violation with the Special Counsel (appointed under subsection (c)). Charges shall be in writing under oath or affirmation and shall contain such information as the Attorney General requires. The person filing a charge shall serve a notice of the charge (including the date, place, and circumstances of the alleged unfair immigration-related employment practice) on the person or entity involved within 10 days. The Special Counsel shall notify each complainant of the notice required under the previous sentence.

"(2) NO OVERLAP WITH EEOC COMPLAINTS.—No charge may be filed respecting an unfair immigration-related employment practice described in subsection (a)(1)(A) if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964, and no charge respecting an employment practice may be filed with the Equal Employment Opportunity Commission under such title if a charge with respect to such practice based on the same set of facts has been filed under this subsection. The previous sentence shall not apply where a charge has been mistakenly filed and has been withdrawn.

"(C) SPECIAL COUNSEL.—

"(1) APPOINTMENT.—The President shall appoint, by and with the advice and consent of the Senate, a Special Counsel for Immigration-Related Unfair Employment Practices (hereinafter in this section referred to as the 'Special Counsel') within the Department of Justice, but outside the Immigration and Naturalization Service, to serve for a term of four years. In the case of a vacancy in the office of the Special Counsel the President may designate the officer or employee who shall act as Special Counsel during such vacancy.

"(2) DUTIES.—The Special Counsel shall be responsible for investigation of charges and issuance of complaints under this section and in respect of the prosecution of all such complaints before immigration judges and the exercise of certain functions under subsection (i)(1).

"(3) COMPENSATION.—The Special Counsel is entitled to receive compensation at the rate now or hereafter provided for grade GS-17 of the General Schedule, under section 5332 of title 5, United States Code.

"(4) REGIONAL OFFICES.—The Special Counsel, in accordance with regulations of the Attorney General, shall establish such regional offices as may be necessary to carry out his duties.

"(5) STAFFING OF OFFICE OF SPECIAL COUNSEL.—In providing staffing for the Special Counsel, the Attorney General shall take into consideration the volume of charges filed with the special Counsel under this section, as well as the complexity of those charges and the need for the conduct of investigations under the second sentence of subsection (d)(1).

"(d) INVESTIGATION OF COMPLAINTS.—

"(1) BY SPECIAL COUNSEL.—The Special Counsel shall investigate each charge received and, within 90 days of the date of the receipt of the charge, determine whether or not there is reasonable cause to believe that the charge is true and whether or not to bring a complaint with respect to the charge before an administrative law judge. The Special Counsel may, on his own initiative, conduct investigations respecting unfair immigration-related employment practices and, based on such an investigation and subject to paragraph (3), file a compliant before such a judge.

"(2) PRIVATE ACTIONS WHERE A PATTERN OR PRACTICE VIOLATION.—If the Special Counsel, after receiving such a charge respecting an unfair immigration-related employment practice which alleges a pattern or practice of discriminatory activity, has not filed a complaint before an immigration judge with respect to such charge within such 90-day period, the person making the charge may (subject to paragraph (3)) file a complaint directly before such a judge.

"(3) TIME LIMITATIONS ON COMPLAINTS.—No complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of the filing of the charge with the Special Counsel and the service of a copy thereof upon the person or entity against whom such charge is made. This subparagraph shall not prevent the subsequent amending of a charge or complaint under subsection (e)(1).

"(e)HEARINGS.—

"(1) NOTICE.—Whenever a complaint is made that a person or entity has engaged in or is engaging in any such unfair immigration-related employment practice, an immigration judge shall have power to issue and cause to be served upon such person or entity a copy of the complaint and a notice of hearing before the judge at a place therein fixed, not less than five days after the serving of the complaint. Any such complaint may be amended by the judge conducting the hearing in the judge's discretion at any time prior to the issuance of an order based thereon. The person or entity so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint.

"(2) CONDUCT OF HEARINGS.—Hearings on complaints under this subsection shall be considered before immigration judges who are specially designated by the Attorney General as having special training respecting employment discrimination and, to the extent practicable, before such judges who only consider cases under this seciton.

"(3) COMPLAINANT AS PARTY.—Any person filing a charge with the Special Counsel respecting an unfair immigration-related employment practice shall be considered a full party to any complaint before an immigration judge respecting such practice and any subsequent appeal respecting that complaint. In the discretion of the judge conducting the hearing, any other person may be allowed to intervene in the said proceeding and to present testimony.

"(f) TESTIMONY AND AUTHORITY OF HEARING OFFICERS.—

"(1) TESTIMONY.—The testimony taken by the immigration judge shall be reduced to writing. Thereafter, the judge, in his discretion, upon notice may provide for the taking of further testimony or hear argument.

"(2) AUTHORITY OF IMMIGRATION JUDGES.—In conducting investigations and hearings under this subsection and in accordance with regulations of the Attorney General, the Special Counsel and immigration judges shall have reasonable access to examine evidence of any person or entity being investigated. The immigration judges by subpena may compel the attendance of witnesses and the production of evidence at any designated place or hearing. In case of contumacy or refusal to obey a subpena lawfully issued under this paragraph and upon application of the immigration judge, an appropriate district court of the United States may issue an order requiring compliance with such subpena and any failure to obey such order may be punished by such court as a contempt thereof.

"(g) DETERMINATIONS.—

"(1) ORDER.—The immigration judge shall issue and cause to be served on the parties to the proceeding an order.

"(2) ORDERS FINDING VIOLATIONS.—

"(A) IN GENERAL.—If, upon the preponderance of the testimony taken, an immigration judge determines that that any person or entity named in the complaint has engaged in or is engaging in any such unfair immigration-related employment practice,

then the judge shall state his findings of fact and shall issue and cause to be served on such person or entity an order which requires such person or entity to cease and desist from such unfair immigration-related employment practice.

"(B) CONTENTS OF ORDER.—Such an order also may require the person or entity—

"(i) to comply with the requirement of section 274A(b) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years;

"(ii) to retain for the period referred to in clause (i) and only for purposes consistent with section 274A(b)(6), the name and address of each individual who applies, in person or in writing, for hiring for an existing position, or for recruiting or referring for a fee, for employment in the United States;

"(iii) to hire individuals directly and adversely affected, with or without back pay; and

"(iv)(I) except as provided in subclause (II), to pay a civil penalty of not more than $1,000 for each individual discriminated against, and

"(II) in the case of a person or entity previously subject to such an order, to pay a civil penalty of not more than $2,000 for each individual discriminated against.

"(C) LIMITATION ON BACK PAY REMEDY.—In providing a remedy under subparagraph (B)(iii), back pay liability shall not accrue from a date more than two years prior to the filing of a charge with an immigration judge. Interim earnings or amounts earnable with reasonable diligence by the individual or individuals aggrieved against shall operate to reduce the back pay otherwise allowable under such paragraph. No order shall require the hiring of an individual as an employee or the payment to him of any back pay, if the individual was refused employment for any reason other than discrimination on account of national origin or citizenship status.

"(D) TREATMENT OF DISTINCT ENTITIES.—In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment without reference to the practices of, or under the control of, or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

"(3) ORDERS NOT FINDING VIOLATIONS.—If upon the preponderance of the testimony taken an immigration judge determines that the person or entity named in the complaint has engaged or is engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue an order dismissing the complaint.

"(h) AWARDING OF ATTORNEY'S FEES.—In any complaint respecting an unfair immigration-related employment practice, an immigration judge, in the judge's discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee.

"(i) JUDICIAL REVIEW PROCEDURES.—

"(1) MODIFICATION OF FINDINGS OR ORDERS PRIOR TO FILING RECORD IN COURT.—Until the record in a case is filed in a court under this subsection, an immigration judge may at any time upon reasonable notice and in such manner as the judge deems proper, modify or set aside, in whole or in party, any finding or order made or issued by the judge.

"(2) PETITION TO COURT FOR ENFORCEMENT OF ORDER, PROCEEDINGS, REVIEW OF JUDGMENT.—The Special Counsel may petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair immigration-related employment practice in question occurred or wherein such person resides or transacts business, for the enforcement of the order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceedings and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the immigration judge. No objection that has not been urged before the judge shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the judge with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the judge, the court may order such additional evidence to be taken before the judge and to be made a part of the record. The immigration judge may modify his findings as to the facts, or make new findings by reason of additional evidence so taken and filed, and the judge shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file his recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

"(3) REVIEW OF FINAL ORDER ON PETITION TO COURT.—Any person aggrieved by a final order of an immigration judge under this section granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair immigration-related employment practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such a court a written petition praying that the order of the immigration judge be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the immigration judge, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the judge, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Special Counsel under paragraph (2), and shall have the same jurisidiction to grant to the aggrieved party such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the judge, the findings of the judge with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

"(4) INSTITUTION OF COURT PROCEEDINGS AS STAY OF JUDGE'S ORDER.—The commencement of proceedings under this subsection shall not, unless specifically ordered by the court, operate as a stay of the immigration judge's order.

"(5) INJUNCTIONS.—The Special Counsel may, upon issuance of a compaint under this section charging that a person has engaged or is engaging in an unfair immigration-related employment practice, to petition any United States district court, within any district wherein the unfair immigration-related employment practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon such have jurisdiction to grant to the Special Counsel such temporary relief or restraining order as it deems just and proper.

"(6) AWARDING OF ATTORNEY'S FEES.—In any proceeding under this subsection, the court, in its discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee as part of costs.".

McCLURE (AND OTHERS) AMENDMENT NO. 607

Mr. McCLURE (for himself, Mr. DECONCINI, Mr. GRAMM, Mr. SYMMS, Mr. CRANSTON, and Mr. BINGAMAN) proposed an amendment to the bill S. 1200, supra; as follows:

On page 116, between lines 16 and 17, insert the following:

SEC. 304. POWERS OF IMMIGRATION OFFICERS AND EMPLOYEES.

Section 287 of the Immigration and Nationality Act (8 U.S.C. 1357) is amended by adding at the end thereof the following:

"(d) Notwithstanding any other provision of this section (other than paragraph (3) of subsection (a)), in the enforcement of this act an officer or employee or the Service may not enter onto the premises of a farm or other agricultural operation without a properly executed warrant."

CRANSTON AMENDMENT NO. 608

Mr. CRANSTON proposed an amendment to the bill S. 1200, supra; as follows:

On page 89, line 15, before the period insert the following: "or, such documents provided under clause (i) may include a rent receipt, bank book, utility bill, or an affidavit from a credible witness (such as a parish priest)".

CHILES AMENDMENT NO. 609

Mr. CHILES proposed an amendment to the bill S. 1200, supra; as follows:

On page 38, between lines 20 and 21, insert the following:

(g)(1) The Attorney General, in consultation with the Secretary of Labor and the Secretary of Health and Human Services, shall conduct a study for use by the Department of Justice in determining employment eligibility in the United States. Such study shall concentrate on those data bases that are currently available to the Federal government which through the use of a telephone and computation capability could be used to verify instantly the employment eligibility status of job applicants.

(2) Such study shall be conducted in conjunction with any existing Federal program which is designed for the purpose of providing information on the resident or employment status of workers for employers. The study shall include an analysis of costs and benefits which shows the differences in costs and efficiency of having the Federal government or a contractor perform this service. Such comparisons should include reference to such technical capabilities as processing techniques and time, verification techniques and time, back up safeguards, and audit trail performance.

(3) Such study shall also concentrate on methods of phone verification which demonstrate the best safety and service standards, the least burden for the employer, the best capability for effective enforcement, and procedures which are within the boundaries of the Privacy Act of 1974.

(4) Such study shall be conducted within 12 months of the date of enactment of this Act.

(5) The Attorney General shall prepare and transmit to the Congress a report—

(A) not later than six months after the date of enactment of this Act, describing the status of such study; and

(B) not later than twelve months after such date, setting forth the findings of such study.

MOYNIHAN (AND D'AMATO) AMENDMENT NO. 610

Mr. MOYNIHAN (for himself and Mr. D'AMATO) proposed an amendment to the bill S. 1200, supra; as follows:

On page 38, between lines 20 and 21, insert the following:

(g)(1) The Comptroller General of the United States, upon consultation with the Commissioner of Immigration as well as private sector representatives (including representatives of the financial, banking, and manufacturing industries), shall inquire into technological alternatives for producing and issuing social security account number cards that are more resistant to counterfeiting than social security account number cards being issued on the date of enactment of this Act by the Social Security Administration, including the use of encoded magnetic, optical, or active electronic media such as magnetic stripes, holograms, and integrated circuit chips. Such inquiry should focus on technologies that will help ensure the authenticity of the card, rather than the identity of the bearer.

(2) The Comptroller General of the United States shall explore additional actions that could be taken to reduce the potential for fraudulently obtaining and using social security account number cards.

(3) Not later than one year after the date of enactment of this Act, the Comptroller General of the United States shall prepare and transmit to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives and the Committee on the Judiciary and the Committee on Finance of the Senate a report setting forth his findings and recommendations under this subsection.

EXON (AND OTHERS) AMENDMENT NO. 611

Mr. EXON (for himself, Mr. SIMON, Mr. BUMPERS, Mr. HARKIN, Mr. GRASSLEY, and Mr. DURENBERGER) proposed an amendment to the bill S. 1200, supra; as follows:

At the appropriate place in the bill, insert the following:

SEC. . (a) The Congress finds and declares that—

(1) The Treasury Department's decision on August 28, 1985 to postpone until November 1, 1985 implementation of a 60-cent per gallon tariff on imported Brazilian ethanol would cause significant harm to U.S. agricultural and commercial ethanol industries, a loss of jobs in the ethanol and related industries, further deteriorate the U.S. balance of trade, pressure downward commodity prices even further and heighten the long-term threat of more U.S. dependence on imported oil;

(2) This decision clearly is counter to the explicit dictates of the Congress in the passage of Public Law 96-499 adopted by the Congress in 1980 and signed into law by the President;

(3) The potential amount of ethanol which could be imported under reduced tariffs before November 1, 1985 could equal the total amount of annual domestic ethanol production in the United States;

(b) It is therefore the sense of the Senate that—

(1) The 60-cent per gallon tariff on imported ethanol should be immediately implemented.

METZENBAUM AMENDMENT NO. 612

Mr. METZENBAUM proposed an amendment to the bill S. 1200, supra; as follows:

On page 44, line 19, insert "for a period of not to exceed two years from the date of enactment of this Act" after "permitted."

GORTON AMENDMENT NO. 613

(Ordered to lie on the table.)

Mr. GORTON submitted an amendment intended to be proposed by him to the bill S. 1200, supra; as follows:

On page 68, between lines 5 and 6, insert the following new section heading:

SEC. 125. TEMPORARY AGRICULTURAL WORKER PROGRAM.

WILSON AMENDMENT NO. 614

(Ordered to lie on the table.)

Mr. WILSON submitted an amendment intended to be proposed by him to amendment No. 613 intented to be proposed by Mr. GORTON to the bill S. 1200, supra; as follows:

In the proposed amendment, strike out all after "SEC. 125." and insert in lieu thereof the following:

SEASONAL AGRICULTURAL WORKER PROGRAM.

(a) PROVIDING NEW "O" NONIMMIGRANT CLASSIFICATION FOR SEASONAL AGRICULTURAL WORKERS.—Section 101(a)(15) (8 U.S.C. 1101(a)(15)), as amended by this Act, is further amended—

(1) by inserting "and other than seasonal agricultural services in perishable commodities described in section 217(h)(1)" in subparagraph (H)(ii) after "section 216(h)(1)";

(2) by striking out "or" at the end of subparagraph (M);

(3) by striking out the period at the end of subparagraph (N) and inserting in lieu thereof "; or"; and

(4) by adding at the end of the following new subparagraph:

"(O) an alien having a residence in a foreign country which he has no intention of abandoning who is coming to the United States to perform seasonal agricultural services in perishable commodities (as defined in section 217(h)(1).".

(b) ADMISSION OF SEASONAL AGRICULTURAL WORKERS.—Chapter 2 of title II is amended by adding after section 216 the following new section:

"SEC. 217. ADMISSION OF SEASONAL AGRICULTURAL WORKERS.

(a) ESTABLISHMENT OF SEASONAL AGRICULTURAL WORKER PROGRAM.—The Attorney General, in consultation with the Secretary of Agriculture and the Secretary of Labor, shall by regulation establish a program (hereafter in this section referred to as 'the program') for the admission into the United States of seasonal agricultural workers (as defined in section 217(h)2).

"(b) ADMISSION OF SEASONAL AGRICULTURAL WORKERS.—A petition to import an alien as a seasonal agricultural worker (as defined in section 217(h)(2)) may not be approved by the Attorney General unless the petitioner certifies to the Attorney General the following:

"(1) SEASONAL AGRICULTURAL EMPLOYER IN PERISHABLE COMMODITIES.—

"(A) NATURE OF PETITIONER.—The petitioner employs (or contracts for the employment of) individuals in seasonal agricultural services in perishable commodities, or is an association representing such employers or contractors.

"(B) REQUIREMENTS OF PETITIONS.—For each month concerned and for each agricultural employment region (designated under section 217(i)(1)) in which the petitioner is operating, the petition must specify—

"(i) the total number and qualifications of individuals in seasonal agricultural services in perishable commodities required in each month, and

"(ii) the type of agricultural work required to be performed by these workers.

"(2) WILL MAKE RECRUITING EFFORT.—The petitioner will make a good faith effort to recruit (as required by the Attorney General in regulations) in the area of intended employment, including the listing of employment opportunities with the appropriate office of a governmental employment service, and will accept for employment able, willing, and qualified workers referred by such office to perform seasonal agricultural services in perishable commodities until the commencement of the seasonal agricultural services for which the petitioner has recruited.

"(3) REPORT ON RECRUITMENT.—In the case of a petitioner that has employed seasonal agricultural workers during the previous 12 months, the petitioner will provide a summary of his efforts to recruit domestic workers to perform seasonal agricultural services in perishable commodities during that period.

"(4) ADEQUATE WORKING CONDITIONS.—The petitioner will provide such wages and working conditions as will not adversely affect the wages and working conditions of United States workers similarly employed.

"(5) HOUSING.—The petitioner will furnish housing for nonimmigrants described in section 101(a)(15)(O) or, at the petitioner's option and instead of arranging for suitable housing accommodations, will substitute payment of a reasonable housing allowance to the provider of the housing, but only if the housing is otherwise available within the approximate area of employment.

"(6) NOTICE TO ATTORNEY GENERAL OF EMPLOYMENT.—The petitioner will notify the Attorney General of the entering into, or termination, of an employment relationship with a seasonal agricultural worker not later than 72 hours of the time the relationship is entered into or terminated.

"(7) EMPLOYMENT ONLY IN SEASONAL AGRICULTURAL EMPLOYMENT IN PERISHABLE COMMODITIES.—The petitioner will not employ a seasonal agricultural worker for services other than seasonal agricultural employment in perishable commodities.

"(8) LIMITATION ON THE USE OF "O" WORKERS IN PERISHABLE COMMODITIES.—The petitioner will not employ (or petition for the employment) of a nonimmigrant in any job opportunity under section 101(a)(15)(O) for seasonal agricultural services in perishable commodities when an application for employment in that job opportunity under section 101(a)(15)(N) is pending or approved.

"(9) JOB INFORMATION DISCLOSURE TO "O" WORKERS.—The petitioner shall, upon request, disclose in writing to seasonal agricultural workers when an offer of employment is made, the place of employment, the wage rates, the employee benefits to be provided, and any costs to be charged for each of them, the crops and kinds of activities for which the worker may be employed, and the anticipated period of employment.

"(c) SUSPENSION OF CERTIFICATION.—The Attorney General shall suspend a petitioner's certification under subsection (b) if any of the following conditions exist:

"(1) LABOR DISPUTE.—There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

"(2) VOLATION OF TERM OF PREVIOUS CERTIFICATION.—

"(A) IN GENERAL.—The employer at any time during the previous two-year period employed seasonal agricultural workers and the Attorney General has determined, after notice and opportunity for a hearing, that the employer at any time during that period—

"(i) substantially violated an essential term or condition of the labor certification under subsection (b) with respect to the employment of domestic or nonimmigrant workers, or

"(ii) has not paid any penalty for such violations which have been assessed by the Attorney General.

"(B) DISQUALIFICATION LIMITED TO ONE YEAR.—No employer may have its certification suspended under clause (A) for more than one year for any violation described in that clause.

"(3) NOT PROVIDING FOR WORKERS' COMPENSATION.—The employer has not provided the Attorney General with satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

"(d) ROLES OF AGRICULTURAL ASSOCIATIONS.—

"(1) PERMITTING FILING BY AGRICULTURAL ASSOCIATIONS.—A petition to import an alien as a seasonal agricultural worker, and a labor certification with respect to such a worker, may be filed by an association representing seasonal agricultural employers which use agricultural services.

"(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If such an association is a joint or sole employer of seasonal agricultural workers, the certifications obtained under this section by the association may be used for the job opportunities of any of its members requiring such workers to perform agricultural services of a seasonal nature for which the certifications were obtained.

"(3) TREATMENT OF VIOLATIONS.—

"(A) MEMBER'S VIOLATION DOES NOT NECESSARILY DISQUALIFY ASSOCIATION OR OTHER MEMBERS.—If an individual member of such an association is determined to have committed an act that under subsection (c)(2) results in the suspension of certification with respect to the member, the suspension shall apply only to that member and does not apply to the association unless the Attorney General determines that the association or other member participated in, or had knowledge of and derived benefit from, the violation.

"(4) ASSOCIATION'S VIOLATION DOES NOT NECESSARILY DISQUALIFY MEMBERS.—If an association representing agricultural employers as an agent, joint employer, or employer is determined to have committed an act that under subsection (c)(2) results in the suspension of certification with respect to the association, the suspension shall apply only to the association and does not apply to any individual member of the association unless the Attorney General determines that the member participated in, or had knowledge of and derived benefit from, the violation.

"(e) EXPEDITED ADMINISTRATIVE APPEAL OF SUSPENSION OF CERTIFICATION UNDER SUBSECTION (c) (2)—

"(1) EXPEDITED PROCEDURES.—The Attorney General shall provide for an expedited procedure for the review of a suspension of certification under subsection (c)(2) or, at the applicant's request, for a de novo administrative hearing respecting the suspension. In the case of a request for such a review or hearing, the Attorney General shall provide that the review or hearing take place not later than 72 hours after the time the request is submitted.

"(f) HEARING DE NOVO BEFORE THE U.S. DISTRICT COURT.—

"(1) JURISDICTION.—On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in the District of Columbia, has jurisdiction to enjoin the Attorney General from suspending the complainant's certification under the program and to order the reinstatement of complainant's certification if it is improperly suspended. In such a case, the court shall determine the matter do move and the burden is on the Attorney General to sustain his suspension.

"(2) PRECEDENCE OF CASES.—Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

"(g) MISCELLANEOUS PROVISIONS.—

"(1) AUTHORITY.—The Attorney General is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.

"(2) APPROPRIATE DOCUMENTATION.—The Attorney General shall provide for such endorsement of entry and exit documents of seasonal agricultural workers as may be necessary to carryout this section and to provide notice for purposes of section 274A.

"(3) PREEMPTION.—The provisions of subsections (a) and (c) of section 214 and the provisions of this section preempt any State or local law regulating admissibility of nonimmigrant workers.

"(h) DEFINITIONS.—For purposes of this section:

"(1) SEASONAL AGRICULTURAL SERVICES IN PERISHABLE COMMODITIES.—The term 'seasonal agricultural services in perishable commodities' means services in agricultural employment including planting cultural practices production, cultivation, growing, and harvesting involving perishable commodities (as defined by regulations of the Secretary of Agriculture).

"(2) SEASONAL AGRICULTURAL WORKER.—The term 'seasonal agricultural worker' means a nonimmigrant described in section 101(a)(15)(O).

"(3) CARIBBEAN BASIN.—The terms 'Caribbean Basin' and 'Caribbean Basin Countries' include those countries eligible to be designated by the President as 'beneficiary countries' under section 212(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(b)).

"(i) ESTABLISHMENT OF NUMERICAL LIMITATIONS BY AGRICULTURAL EMPLOYMENT REGION.—

"(1) ESTABLISHMENT OF AGRICULTURAL EMPLOYMENT REGION.— For purposes of the administration of the program the Attorney General shall designate not more than 10 agricultural employment regions within the United States. The entire United States shall be encompassed by the area of all such regions.

"(2) NUMERICAL LIMITATIONS.—After considering the factors described in paragraph (3), if the Attorney general determines that seasonal agricultural workers are required for a month for an agricultural employment region, the Attorney General shall establish a numerical limitation on the number of nonimmigrant visas that may be issued for such workers for that month for that region, except until the end of the third year after the effective date of this Act, the Attorney General may not establish a numerical limitation on the number of such visas that may be issued at any given time in excess of 350,000.

"(3) FACTORS IN DETERMINATION.—In making the determination and establishing numerical limitations under paragraph (2), the Attorney General shall—

"(A) base the determinations and limitations on petitions filed under section 217(b)(1),

"(B) take into consideration the historical employment needs of agricultural employers and the availability of able, willing, and qualified domestic labor,

"(C) take into consideration the recruitment efforts undertaken by the Secretary of Labor under section 404(d)(1)(A), and

"(D) consult with the Secretary of Agriculture.

"(4) NUMERICAL LIMITATIONS AFTER THREE YEARS.—The Attorney General shall establish at the end of the third year after the effective date of this Act, a numerical limit on the total number of seasonal agricultural workers to be admitted into all employment regions in the United States under the program at any given time. In establishing a numerical limit under this paragraph, the Attorney General shall—

"(A) consider petitions filed under section 217(b)(1) during the preceding years of the program,

"(B) take into consideration the historical employment needs of agricultural employers and the availability of able, willing, and qualified domestic labor,

"(C) take into consideration the recruitment efforts under taken by the Secretary of Labor under section 404(d)(1)(A),

"(D) consult with Secretary of Agriculture, and

"(E) consider the recommendation of the Commission on Agricultural Worker Programs on a numerical limit as provided under section 124(c)(5).

"(5) CHANGES IN NUMERICAL LIMITATIONS IN EXTRAORDINARY CIRCUMSTANCES.—

"(A) INADEQUATE MONTHLY AND REGIONAL LIMITATIONS.—If—

"(i) a numerical limitation has been established under paragraphs (2) or (4) for a region for a month, and

"(ii) a petitioner described in section 217(b)(1) establishes that extraordinary and unusual circumstances have resulted in a significant change in the petitioner's need for seasonal agricultural workers specified in the petition or in the availability of domestic workers who are able, willing, and qualified to perform seasonal agricultural employment, the petitioner may apply to the Attorney General (in such form and manner as the Attorney General shall provide) for an increase in the numerical limitations otherwise established under paragraphs (2) and (4) to accommodate the circumstances.

"(B) DETERMINATION.—The Attorney General shall make a determination on such an application within 72 hours of the date the application is completed. To the extent the application is approved, the Attorney General shall provide for an appropriate increase in the appropriate monthly and regional numerical limitation. The Attorney General may expand the number of workers admitted into the region for which the application is approved by transferring seasonal agricultural workers from another region with a lesser need or by admitting additional workers from foreign countries. In the event the limit on the admission of seasonal agricultural workers for all regions in the United States established under paragraph (4) has been reached at the time the application alleging extraordinary and unusual circumstances is filed, the Attorney General shall follow the procedures in subparagraph (C).

"(C) INCREASE IN THE NUMERICAL LIMITATION ESTABLISHED BY THE ATTORNEY GENERAL.—If—

"(i) a numerical limitation on the admission of seasonal agricultural workers into all employment regions has been established by the Attorney General under paragraph (4) and

"(ii) a petitioner described in section 217(b)(1) establishes under the provisions of subparagraphs (A) and (B) that extraordinary and unusual circumstances require an increase in the numerical limitation, the Attorney General may provide for an increase in the appropriate numerical limitation in an amount not to exceed 20 percent of the total number authorized for admission into all regions. Any such increase authorized by the Attorney General shall terminate upon the end of circumstances requiring it and shall not result in a permanent expansion of the numerical limit established the Attorney General under paragraph (4).

"(j) ENTRY OF SEASONAL AGRICULTURAL WORKERS.—

"(1) ANNUAL TIME LIMITATION.—An alien may not be admitted to the United States as a seasonal agricultural worker under section 101(a)(15)(O) for a period of more than nine months in any calendar year. An alien admitted under section 101(a)(15)(O) during any calendar year will not be eligible for readmission into the United States until he has returned to his country of origin for a period of 3 months.

"(2) VIOLATORS DISQUALIFIED FOR 5 YEARS.—An alien may not be admitted to the United States as a seasonal agricultural worker if the alien was admitted to the United States as such a worker within the previous five-year period and the alien during that period violated a term or condition of such previous admission.

"(k) WAGES AND WORKING CONDITIONS.—The Attorney General, in consultation with the Secretaries of Agriculture and Labor, shall establish through regulation appropriate wages and working conditions as will not adversely affect the wages and working conditions of United States workers similarly employed in the area of intended employment.

"(l) ALLOCATION AND USE OF VISAS UNDER THE PROGRAM.—

"(1) IN GENERAL.—Nonimmigrant visas for seasonal agricultural workers, within the numerical limitations established under subsection (i)(2), shall be made available as follows:

"(A) PREVIOUS WORKERS.—Visas shall first be made available to qualified nonimmigrants who have previously been admitted as seasonal agricultural workers and who have fully complied with the terms and conditions of any such previous admission, providing priority in consideration among such aliens in the order of the length of time in which they were so employed.

"(B) OTHERS.—Any remaining visas shall be made available to other qualified nonimmigrants.

"(C) TREATMENT OF SPOUSES AND CHILDREN.—A spouse or child of a seasonal agricultural worker is not entitled to a nonimmigrant visa as such a worker by virtue of such relationship, whether or not accompanying or following to join the nonimmigrant, but may be provided a nonimmigrant visa as such a worker if the spouse or child also is qualified as such a worker.

"(D) NO INDIVIDUAL EMPLOYER VISA PETITION REQUIRED.—An alien admitted pursuant to section 101(a)(15) (O) shall not be required to obtain any petition from any prospective employer within the United States in order to obtain a nonimmigrant visa under the program.

"(E) NO LIMITATION TO PARTICULAR EMPLOYER OR CROP.—A nonimmigrant visa issued under the program shall not limit the geographical area (other than by agricultural employment region) within which a seasonal agricultural worker may be employed or limit the type of seasonal agricultural employment services, in perishable commodities, the worker may perform.

"(F) DISQUALIFICATION FROM FEDERAL ASSISTANCE.—A seasonal agricultural worker under the program is not eligible for any program of financial assistance under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government.

"(G) ALLOCATION OF VISAS TO CARIBBEAN BASIN COUNTRIES.—The Attorney General, in consultation with the Secretaries of State and Agriculture, shall establish through regulations the allocation of visas to workers in specific countries under this section. A percentage of the visas issued shall be allocated to qualified workers in countries located in the Caribbean Basin.

"(m) TRUST FUND FOR PROGRAM ADMINISTRATION.—

"(1) ESTABLISHMENT.—The Attorney General shall establish by regulation a trust fund the purpose of which is to provide funds for the administration of the program and to provide a monetary incentive for seasonal agricultural workers in the program to return to their country of origin upon expiration of their visas under the program. The Attorney General shall promulgate such other regulations as may be necessary to carry out this subsection.

"(2) PAYMENTS INTO TRUST FUND.—In the case of employment of a seasonal agricultural worker under the program—

"(A) EMPLOYER PAYMENT.—The employer shall provide for payment into the trust fund established under this subsection of an amount equivalent to 11 percent of the wages of the worker.

"(B) WORKER PAYMENT.—There shall be deducted from the wages of the nonimmigrant and paid into such trust fund an amount equivalent to 20 percent of the wages of the worker.

"(C) WAGES DEFINED.—For purposes of this paragraph, the term 'wages' has the meaning given such term in section 3121(a) of the Internal Revenue Code of 1954, except that for these purposes paragraph (1) of that section shall not apply.

"(3) USE OF AMOUNTS IN TRUST FUND.—

"(A) EMPLOYER PAYMENTS AND INTEREST.—Except as provided in paragraph (B), amounts paid into the trust fund, and interest thereon, shall be used for the purpose of administering the program.

"(B) WORKER PAYMENTS.—Amounts described in paragraph (B) paid into the trust fund with respect to a worker and interest thereon shall be paid to the worker if—

"(i) the worker applies for payment within 30 days of the last day of employment under the program (as verified by the Attorney General) at the United States consulate nearest the worker's residence in the country of origin, and

"(ii) the worker complies with the terms and conditions of the program, including the obligation to be continuously employed (or actively seeking employment) in seasonal agricultural employment in perishable commodities.

"(4) EXPANSION OF CONSULATES.—The Secretary of State is authorized to take such

steps as may be necessary in order to expand and establish consulates in foreign countries in which aliens are likely to apply for nonimmigrant status under the program.".

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 404 (8 U.S.C. 1101), as amended by sections 101(b) and 102(b) of this Act, is further amended by adding at the end the following new subsections:

"(d) AUTHORIZATIONS OF APPROPRIATIONS FOR SECRETARY OF LABOR.—(1) There are authorized to be appropriated to the Secretary of Labor for each fiscal year, beginning with fiscal year 1986, $10,000,000 for the purposes—

"(A) of recruiting domestic workers for temporary services which might otherwise be performed by seasonal agricultural workers described in section 217, and

"(B) of monitoring terms and conditions under which such temporary and seasonal agricultural workers (and domestic workers employed by the same employers) are employed in the United States.

"(e) AUTHORIZATION OF APPROPRIATIONS FOR SECRETARY OF AGRICULTURE.—There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1986, such sums as may be necessary for the purposes of enabling the Secretary of Agriculture to carry out the Secretary's duties and responsibilities under section 217.".

(d) PROHIBITING ADJUSTMENT OF STATUS OF TEMPORARY AGRICULTURAL WORKERS.—(1) Section 245(c) (8 U.S.C. 1255(c)), as amended by sections 113(a) and 122(e)(1) of this Act, is further amended by adding at the end the following new paragraph:

"(4) An alien (other than an immediate relative specified in section 210(b)) who entered the United States classified as a nonimmigrant under section 101(a)(15)(O).

(2) Section 248(l) (8 U.S.C. 1258(l)), as amended by section 122(e)(2), is further amended by striking out "(K) or (N)" and inserting in lieu thereof "(K), (N), or (O).".

(e) EFFECTIVE DATE.—The amendments made by subsections (a), (b), (c), and (d) of this section apply to petitions and applications filed under section 217 of the Immigration and Nationality Act on or after the first day of the twelfth month beginning after the date of the enactment of this Act (hereafter in this section referred to as the "effective date").

(f) REGULATIONS.—The Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall approve all regulations to be issued implementing sections 101(a)(15)(O) and 217 of the Immigration and Nationality Act. Notwithstanding any other provision of law, final regulations to implement such sections shall first be issued, on an interim or other basis, not later than the effective date.

(g) DEPORTATION OF SEASONAL AGRICULTURAL WORKERS FOR FAILURE TO BE EMPLOYED OR SEEK EMPLOYMENT.—Section 241(a) (8 U.S.C. 1251(a)) is amended—

(1) by striking out the period at the end of paragraph (19) and inserting in lieu thereof "; or"; and

(2) by adding at the end the following new paragraph:

"(20) entered the United States as nonimmigrants under section 101(a)(15)(O) and failed to be continuously employed or actively seeking employment in seasonal agricultural employment in perishable commodities (as defined in section 217(h)(1) in accordance with the usual and customary employment patterns and practices.".

(h) SENSE OF CONGRESS RESPECTING ADVISORY COMMISSION.—It is the sense of Congress that the President should establish an advisory commission which shall consult with the Government of Mexico and the governments of other appropriate countries and advise the Attorney General regarding the operation of the seasonal agricultural worker program established under section 217 of the Immigration and Nationality Act.

(i) CONFORMING AMENDMENT TO TABLE OF CONTENTS.—The table of contents is amended by inserting after the item relating to section 216, as added by section 122(h), the following new item:

"Sec. 217. Seasonal agricultural worker program.".

LEVIN (AND DECONCINI) AMENDMENT NO. 615

(Ordered to lie on the table.)

Mr. LEVIN (for himself and Mr. DECONCINI) submitted an amendment intended to be proposed by them to the bill S. 1200, supra; as follows:

On page 93, between lines 7 and 8, insert the following:

(k)(1) The Congress finds that because equities exist in a certain group of persons who, while at present in the United States illegally, arrived prior to January 1, 1980, this Act provides the prospect for legislation for such group of persons who meet the eligibility requirements of this Act.

(2) It is not the purpose of this Act to deny employment or to otherwise prevent such group of persons from qualifying for legalization.

(3) Notwithstanding any other provision of law, the Attorney General shall prescribe regulations to permit any person who would be eligible for legalization under section 202 to remain in the United States and to engage in employment until the end of the application period described in subsection (a)(1).

WILSON AMENDMENT NO. 616

(Ordered to lie on the table.)

Mr. WILSON submitted an amendment intended to be proposed by him to the bill S. 1200, supra; as follows:

On page 68, between lines 5 and 6, insert the following new section:

SEC. 125. SEASONAL AGRICULTURAL WORKER PROGRAM.

(a) PROVIDING NEW "O" NONIMMIGRANT CLASSIFICATION FOR SEASONAL AGRICULTURAL WORKERS.—Section 101(a)(15) (8 U.S.C. 1101(a)(15)), as amended by this Act, is further amended—

(1) by inserting "and other than seasonal agricultural services in perishable commodities described in section 217(h)(1)" in subparagraph (H)(ii) after "section 216(h)(1)";

(2) by striking out "or" at the end of subparagraph (M);

(3) by striking out the period at the end of subparagraph (N) and inserting in lieu thereof "; or"; and

(4) by adding at the end the following new subparagraph;

"(O) an alien having a residence in a foreign country which he has no intention of abandoning who is coming to the United States to perform seasonal agricultural services in perishable commodities (as defined in section 217(h)(1)).".

(b) ADMISSION OF SEASONAL AGRICULTURAL WORKERS.—Chapter 2 of title II is amended by adding after section 216 the following new section:

"SEC. 217. ADMISSION OF SEASONAL AGRICULTURAL WORKERS.

"(a) ESTABLISHMENT OF SEASONAL AGRICULTURAL WORKER PROGRAM.—The Attorney General, in consultation with the Secretary of Agriculture and the Secretary of Labor, shall by regulation establish a program (hereafter in this section referred to as 'the program') for the admission into the United States of seasonal agricultural workers (as defined in section 217(h)(2).

"(b) ADMISSION OF SEASONAL AGRICULTURAL WORKERS.—A petition to import an alien as a seasonal agricultural worker (as defined in section 217(h)(2)) may not be approved by the Attorney General unless the petitioner certifies to the Attorney General the following:

"(1) SEASONAL AGRICULTURAL EMPLOYER IN PERISHABLE COMMODITIES.—

"(A) NATURE OF PETITIONER.—The petitioner employs (or contracts for the employment of) individuals in seasonal agricultural services in perishable commodities, or is an association representing such employers or contractors.

"(B) REQUIREMENTS OF PETITIONS.—For each month concerned and for each agricultural employment region (designated under section 217(i)(1)) in which the petitioner is operating, the petition must specify—

"(i) the total number and qualifications of individuals in seasonal agricultural services in perishable commodities required in each month, and

"(ii) the type of agricultural work required to be performed by these workers.

"(2) WILL MAKE RECRUITING EFFORT.—The petitioner will make a good faith effort to recruit (as required by the Attorney General in regulations) in the area of intended employment, including the listing of employment opportunities with the appropriate office of a governmental employment service, and will accept for employment able, willing, and qualified workers referred by such office to perform seasonal agricultural services in perishable commodities until the commencement of the seasonal agricultural services for which the petitioner has recruited.

"(3) REPORT ON RECRUITMENT.—In the case of a petitioner that has employed seasonal agricultural workers during the previous 12 months, the petitioner will provide a summary of his efforts to recruit domestic workers to perform seasonal agricultural services in perishable commodities during that period.

"(4) ADEQUATE WORKING CONDITIONS.—The petitioner will provide such wages and working conditions as will not adversely affect the wages and working conditions of United States workers similarly employed.

"(5) HOUSING.—The petitioner will furnish housing for nonimmigrants described in section 101(a)(15)(O) or, at the petitioner's option and instead of arranging for suitable housing accommodations, will substitute payment of a reasonable housing allowance to the provider of the housing, but only if the housing is otherwise available within the approximate area of employment.

"(6) NOTICE TO ATTORNEY GENERAL OF EMPLOYMENT.—The petitioner will notify the Attorney General of the entering into, or termination, of an employment relationship with a seasonal agricultural worker not later than 72 hours of the time the relationship is entered into or terminated.

"(7) EMPLOYMENT ONLY IN SEASONAL AGRICULTURAL EMPOLOYMENT IN PERISHABLE COMMODITIES.—The petitioner will not employ a seasonal agricultural worker for services

other than seasonal agricultural employment in perishable commodities.

"(8) LIMITATION ON THE USE OF 'O' WORKERS IN PERISHABLE COMMODITIES.—The petitioner will not employ (or petition for the employment) of a nonimmigrant in any job opportunity under section 101(a)(15)(O) for seasonal agricultural services in perishable commodities when an application for employment in that job opportunity under section 101(a)(15)(N) is pending or approved.

"(9) JOB INFORMATION DISCLOSURE TO 'O' WORKERS.—The petitioner shall, upon request, disclose in writing to seasonal agricultural workers when an offer of employment is made, the place of employment, the wage rates, the employee benefits to be provided, and any costs to be charged for each of them, the crops and kinds of activities for which the worker may be employed, and the anticipated period of employment.

"(c) SUSPENSION OF CERTIFICATION.—The Attorney General shall suspend a petitioner's certification under subsection (b) if any of the following conditions exist:

"(1) LABOR DISPUTE.—There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

"(2) VIOLATION OF TERM OF PREVIOUS CERTIFICATION.—

"(A) IN GENERAL.—The employer at any time during the previous two-year period employed seasonal agricultural workers and the Attorney General has determined, after notice and opportunity for a hearing, that the employer at any time during that period—

"(i) substantially violated an essential term or condition of the labor certification under subsection (b) with respect to the employment of domestic or nonimmigrant workers, or

"(ii) has not paid any penalty for such violations which have been assessed by the Attorney General.

"(B) DISQUALIFICATION LIMITED TO ONE YEAR.—No employer may have its certification suspended under clause (A) for more than one year for any violation described in that clause.

"(3) NOT PROVIDING FOR WORKERS' COMPENSATION.—The employer has not provided the Attorney General with satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

"(d) ROLES OF AGRICULTURAL ASSOCIATIONS.—

"(1) PERMITTING FILING BY AGRICULTURAL ASSOCIATIONS.—A petition to import an alien as a seasonal agricultural worker, and a labor certification with respect to such a worker, may be filed by an association representing seasonal agricultural employers which use agricultural services.

"(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If such an association is a joint or sole employer of seasonal agricultural workers, the certifications obtained under this section by the association may be used for the job opportunities of any of its members requiring such workers to perform agricultural services of a seasonal nature for which the certifications were obtained.

"(3) TREATMENT OF VIOLATIONS.—

"(A) MEMBER'S VIOLATION DOES NOT NECESSARILY DISQUALIFY ASSOCIATION OR OTHER MEMBERS.—If an individual member of such an association is determined to have committed an act that under subsection (c)(2) results in the suspension of certification with respect to the member, the suspension shall apply only to that member and does not apply to the association unless the Attorney General determines that the association or other member participated in, or had knowledge of and derived benefit from, the violation.

"(4) ASSOCIATION'S VIOLATION DOES NOT NECESSARILY DISQUALIFY MEMBERS.—If an association representing agricultural employers as an agent, joint employer, or employer is determined to have committed an act that under subsection (c)(2) results in the suspension of certification with respect to the association, the suspension shall apply only to the association and does not apply to any individual member of the association unless the Attorney General determines that the member participated in, or had knowledge of and derived benefit from, the violation.

"(e) EXPEDITED ADMINISTRATIVE APPEAL OF SUSPENSION OF CERTIFICATION UNDER SUBSECTION (c)(2)—

"(1) EXPEDITED PROCEDURES.—The Attorney General shall provide for an expedited procedure for the review of a suspension of certification under subsection (c)(2) or, at the applicant's request, for a de novo administrative hearing respecting the suspension. In the case of a request for such a review or hearing, the Attorney General shall provide that the review or hearing take place not later than 72 hours after the time the request is submitted.

"(f) HEARING DE NOVO BEFORE THE U.S. DISTRICT COURT.—

"(1) JURISDICTION.—On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in the District of Columbia, has jurisdiction to enjoin the Attorney General from suspending the complainant's certification under the program and to order the reinstatement of complainant's certification if it is improperly suspended. In such a case, the court shall determine the matter de novo and the burden is on the Attorney General to sustain his suspension.

"(2) PRECEDENCE OF CASES.—Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

"(g) MISCELLANEOUS PROVISIONS.—

"(1) AUTHORITY.—The Attorney General is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.

"(2) APPROPRIATE DOCUMENTATION.—The Attorney General shall provide for such endorsement of entry and exit documents of seasonal agricultural workers as may be necessary to carry out this section and to provide notice for purposes of section 274A.

"(3) PREEMPTION.—The provisions of subsections (a) and (c) of section 214 and the provisions of this section preempt any State or local law regulating admissibility of nonimmigrant workers.

"(h) DEFINITIONS.—For purposes of this section:

"(1) SEASONAL AGRICULTURAL SERVICES IN PERISHABLE COMMODITIES.—The term 'seasonal agricultural services in perishable commodities' means services in agricultural employment (as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) involving perishable commodities (as defined by regulations of the Secretary of Agriculture).

"(2) SEASONAL AGRICULTURAL WORKER.—The term 'seasonal agricultural worker' means a nonimmigrant described in section 101(a)(15)(O).

"(3) CARIBBEAN BASIN.—The terms 'Caribbean Basin' and 'Caribbean Basin Countries' include those countries eligible to be designated by the President as 'beneficiary countries' under section 212(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(b)).

"(i) ESTABLISHMENT OF NUMERICAL LIMITATIONS BY AGRICULTURAL EMPLOYMENT REGION.—

"(1) ESTABLISHMENT OF AGRICULTURAL EMPLOYMENT REGION.—For purposes of the administration of the program the Attorney General shall designate not more than 10 agricultural employment regions within the United States. The entire United States shall be encompassed by the area of all such regions.

"(2) NUMERICAL LIMITATIONS.—After considering the factors described in paragraph (3), if the Attorney General determines that seasonal agricultural workers are required for a month for an agricultural employment region, the Attorney General shall establish a numerical limitation on the number of nonimmigrant visas that may be issued for such workers for that month for that region, except until the end of the third year after the effective date of this Act, the Attorney General may not establish a numerical limitation on the number of such visas that may be issued at any given time in excess of 350,000.

"(3) FACTORS IN DETERMINATION.—In making the determination and establishing numerical limitations under paragraph (2), the Attorney General shall—

"(A) base the determinations and limitations on petitions filed under section 217(b)(1),

"(B) take into consideration the historical employment needs of agricultural employers and the availability of able, willing, and qualified domestic labor,

"(C) take into consideration the recruitment efforts undertaken by the Secretary of Labor under section 404(d)(1)(A), and

"(D) consult with the Secretary of Agriculture.

"(4) NUMERICAL LIMITATIONS AFTER 3 YEARS.—The Attorney General shall establish at the end of the third year after the effective date of this Act, a numerical limit on the total number of seasonal agricultural workers to be admitted into all employment regions in the United States under the program at any given time. In establishing a numerical limit under this paragraph, the Attorney General shall—

"(A) consider petitions filed under section 217(b)(1) during the preceding years of the program,

"(B) take into consideration the historical employment needs of agricultural employers and the availability of able, willing, and qualified domestic labor,

"(C) take into consideration the recruitment efforts under taken by the Secretary of Labor under section 404(d)(1)(A),

"(D) consult with Secretary of Agriculture, and

"(E) consider the recommendation of the Commission on Agricultural Worker Pro-

grams on a numerical limit as provided under section 124(c)(5).

"(5) CHANGES IN NUMERICAL LIMITATIONS IN EXTRAORDINARY CIRCUMSTANCES.—

"(A) INADEQUATE MONTHLY AND REGIONAL LIMITATIONS.—If—

"(i) a numerical limitation has been established under paragraphs (2) or (4) for a region for a month, and

"(ii) a petitioner described in section 217(b)(1) established that extraordinary and unusual circumstances have resulted in a significant change in the petitioner's need for seasonal agricultural workers specified in the petition or in the availability of domestic workers who are able, willing, and qualified to perform seasonal agricultural employment, the petitioner may apply to the Attorney General (in such form and manner as the Attorney General shall provide) for an increase in the numerical limitations otherwise established under paragraphs (2) and (4) to accommodate the circumstances.

"(B) DETERMINATION.—The Attorney General shall make a determination on such an application within 72 hours of the date the application is completed. To the extent the application is approved, the Attorney General shall provide for an appropriate increase in the appropriate monthly and regional numerical limitation. The Attorney General may expand the number of workers admitted into the region for which the application is approved by transferring seasonal agricultural workers from another region with a lesser need or by admitting additional workers from foreign countries. In the event the limit on the admission of seasonal agricultural workers for all regions in the United States established under paragraph (4) has been reached at the time the application alleging extraordinary and unusual circumstances is filed, the Attorney General shall follow the procedures in subparagraph (C).

"(C) INCREASE IN THE NUMERICAL LIMITATION ESTABLISHED BY THE ATTORNEY GENERAL.—If—

"(i) a numerical limitation on the admission of seasonal agricultural workers into all employment regions has been established by the Attorney General under paragraph (4) and

"(ii) a petitioner described in section 217(b)(1) establishes under the provisions of subparagraphs (A) and (B) that extraordinary and unusual circumstances require an increase in the numerical limitation, the Attorney General may provide for an increase in the appropriate numerical limitation in an amount not to exceed 20 percent of the total number authorized for admission into all regions. Any such increase authorized by the Attorny General shall terminate upon the end of circumstances requiring it and shall not result in a permanent expansion of the numerical limit established the Attorney General under paragraph (4).

"(j) ENTRY OF SEASONAL AGRICULTURAL WORKERS.—

"(1) ANNUAL TIME LIMITATION.—An alien may not be admitted to the United States as a seasonal agricultural worker under section 101(a)(15)(O) for a period of more than nine months in any calendar year. An alien admitted under section 101(a)(15)(O) during any calendar year will not be eligible for readmission into the United States until he has returned to his country of origin for a period of 3 months.

"(2) VIOLATORS DISQUALIFIED FOR 5 YEARS.—An alien may not be admitted to the United States as a seasonal agricultural worker if the alien was admitted to the United States as such a worker within the previous five-year period and the alien during that period violated a term or condition of such previous admission.

"(k) WAGES AND WORKING CONDITIONS.—The Attorney General, in consultation with the Secretaries of Agriculture and Labor, shall establish through regulation appropriate wages and working conditions as will not adversely affect the wages and working conditions of United States workers similarly employed in the area of intended employment.

"(l) ALLOCATION AND USE OF VISAS UNDER THE PROGRAM.—

"(1) IN GENERAL.—Nonimmigrant visas for seasonal agricultural workers, within the numerical limitations established under subsection (i)(2), shall be made available as follows:

"(A) PREVIOUS WORKERS.—Visas shall first be made available to qualified nonimmigrants who have previously been admitted as seasonal agricultural workers and who have fully complied with the terms and conditions of any such previous admission, providing priority in consideration among such aliens in the order of the length of time which they were so employed.

"(B) OTHERS.—Any remaining visas shall be made available to other qualified nonimmigrants.

"(C) TREATMENT OF SPOUSES AND CHILDREN.—A spouse or child of a seasonal agricultural worker is not entitled to a nonimmigrant visa as such a worker by virtue of such relationship, whether or not accompanying or following to join the nonimmigrant, but may be provided a nonimmigrant visa as such a worker if the spouse or child also is a qualified as such a worker.

"(D) NO INDIVIDUAL EMPLOYER VISA PETITION REQUIRED.—An alien admitted pursuant to section 101(a)(15)(O) shall not be required to obtain any petition from any prospective employer within the United States in order to obtain a nonimmigrant visa under the program.

"(E) NO LIMITATION TO PARTICULAR EMPLOYER OR CROP.—A nonimmigrant visa issued under the program shall not limit the geographical area (other than by agricultural employment region) within which a seasonal agricultural worker may be employed or limit the type of seasonal agricultural employment services, in perishable commodities, the worker may perform.

"(F) DISQUALIFICATION FROM FEDERAL ASSISTANCE.—A seasonal agricultural worker under the program is not eligible for any program of financial assistance under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government.

"(G) ALLOCATION OF VISAS TO CARIBBEAN BASIN COUNTRIES.—The Attorney General, in consultation with the Secretaries of State and Agriculture, shall establish through regulations the allocation of visas to workers in specific countries under this section. A percentage of the visas issued shall be allocated to qualified workers in countries located in the Caribbean Basin.

"(m) TRUST FUND FOR PROGRAM ADMINISTRATION.—

"(1) ESTABLISHMENT.—The Attorney General shall establish by regulation a trust fund the purpose of which is to provide funds for the administration of the program and to provide a monetary incentive for seasonal agricultural workers in the program to return to their country of origin upon expiration of their visas under the program. The Attorney General shall promulgate such other regulations as may be necessary to carry out this subsection.

"(2) PAYMENTS INTO TRUST FUND.—In the case of employment of a seasonal agricultural worker under the program—

"(A) EMPLOYER PAYMENT.—The employer shall provide for payment into the trust fund established under this subsection of an amount equivalent to 11 percent of the wages of the worker.

"(B) WORKER PAYMENT.—There shall be deducted from the wages of the nonimmigrant and paid into such trust fund an amount equivalent to 20 percent of the wages of the worker.

"(C) WAGES DEFINED.—For purposes of this paragraph, the term 'wages' has the meaning given such term in section 3121(a) of the Internal Revenue Code of 1954, except that for these purposes paragraph (1) of that section shall not apply.

"(3) USE OF AMOUNTS IN TRUST FUND.—

"(A) EMPLOYER PAYMENTS AND INTEREST.—Except as provided in paragraph (B), amounts paid into the trust fund, and interest thereon, shall be used for the purpose of administering the program.

"(B) WORKER PAYMENTS.—Amounts described in paragraph (B) paid into the trust fund with respect to a worker and interest thereon shall be paid to the worker if—

"(i) the worker applies for payment within 30 days of the last day of employment under the program (as verified by the Attorney General) at the United States consulate nearest the worker's residence in the country of origin, and

"(ii) the worker complies with the terms and conditions of the program, including the obligation to be continuously employed (or actively seeking employment) in seasonal agricultural employment in perishable commodities.

"((4) EXPANSION OF CONSULATES.—The Secretary of State is authorized to take such steps as may be necessary in order to expand and establish consulates in foreign countries in which aliens are likely to apply for nonimmigrant status under the program.".

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 404 (8 U.S.C. 1101), as amended by sections 101(b) and 102(b) of this Act, is further amended by adding at the end the following new subsections:

"(d) AUTHORIZATIONS OF APPROPRIATIONS FOR SECRETARY OF LABOR.—(1) There are authorized to be appropriated to the Secretary of Labor for each fiscal year, beginning with fiscal year 1986, $10,000,000 for the purposes—

"(A) of recruiting domestic workers for temporary services which might otherwise be performed by seasonal agricultural workers described in section 217, and

"(B) of monitoring terms and conditions under which such temporary and seasonal agricultural workers (and domestic workers employed by the same employers) are employed in the United States.

"(e) AUTHORIZATION OF APPROPRIATIONS FOR SECRETARY OF AGRICULTURE.—There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1986, such sums as may be necessary for the purposes of enabling the Secretary of Agriculture to carry out the Secretary's duties and responsibilities under section 217.".

(d) PROHIBITING ADJUSTMENT OF STATUS OF TEMPORARY AGRICULTURAL WORKERS.—(1)

Section 245(c) (8 U.S.C. 1255(c)), as amended by sections 113(a) and 122(e)(1) of this Act, is further amended by adding at the end the following new paragraph:

"(4) An alien (other than an immediate relative specified in section 210(b)) who entered the United States classified as a nonimmigrant under section 101(a)(15)(O).

(2) Section 248(1) (8 U.S.C. 1258(1)), as amended by section 122(e)(2), is further amended by striking out "(K) or (N)" and inserting in lieu thereof "(K), (N), or (O).".

(e) EFFECTIVE DATE.—The amendments made by subsections (a), (b), (c), and (d) of this section apply to petitions and applications filed under section 217 of the Immigration and Nationality Act on or after the first day of the twelfth month beginning after the date of the enactment of this Act (hereafter in this section referred to as the "effective date").

(f) REGULATIONS.—The Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall approve all regulations to be issued implementing sections 101(a)(15)(O) and 217 of the Immigration and Nationality Act. Notwithstanding any other provision of law, final regulations to implement such sections shall first be issued, on an interim or other basis, not later than the effective date.

(g) DEPORTATION OF SEASONAL AGRICULTURAL WORKERS FOR FAILURE TO BE EMPLOYED OR SEEK EMPLOYMENT.—Section 241(a) (8 U.S.C. 1251(a)) is amended—

(1) by striking out the period at the end of paragraph (19) and inserting in lieu thereof "; or"; and

(2) by adding at the end the following new paragraph:

"(20) entered the United States as nonimmigrants under section 101(a)(15)(O) and failed to be continuously employed or actively seeking employment in seasonal agricultural employment in perishable commodities (as defined in section 217(h)(1) in accordance with the usual and customary employment patterns and practices.".

(h) SENSE OF CONGRESS RESPECTING ADVISORY COMMISSION.—It is the sense of Congress that the President should establish an advisory commission which shall consult with the Government of Mexico and the governments of other appropriate countries and advise the Attorney General regarding the operation of the seasonal agricultural worker program established under section 217 of the Immigration and Nationality Act.

(i) Conforming Amendment to Table of Contents.—The table of contents is amended by inserting after the item relating to section 216, as added by section 122(h), the following new item:

"Sec. 217. Seasonal agricultural worker program."

On Page 2, in the table of contents of the bill, insert after the item relating to section 124 the following new item:

"Sec. 125. Seasonal agricultural worker program."

On page 37, line 12, insert ", 101(a)(15)(O)," after "101(a)(15)(N)".

On page 60, line 1, insert "or 217" after "section 216".

On page 60, line 3, strike out "such section" and insert in lieu thereof "section 216 or subsection (b)(4) of section 217, as the case may be,".

On page 63, line 6, insert "and section 217" after "section 216".

On page 64, between lines 14 and 15, insert the following:

"(3) The Commission shall specifically review the following with respect to the seasonal agricultural worker program under section 217 of the Immigration and Nationality Act:

"(A) The standards described in subsections (b) (2), (3), and (4) of that section for the certification respecting seasonal agricultural workers.

"(B) What is the proper length of time and proper mechanism for the recruitment of domestic workers before importation of such foreign workers.

"(C) Whether current labor standards offer adequate protection for domestic and foreign agricultural workers.

"(D) The availability of sufficient able, willing, and qualified domestic workers to meet the needs of agricultural employers.

"(E) The appropriate limit on the number of seasonal agricultural workers who may be imported into all agricultural regions in the United States at any given time, taking into consideration all relevant data, including that resulting from the experience of the Agricultural Labor Transition Program.".

On page 64, line 16, strike out "two years" and insert in lieu thereof "three years".

On page 64, line 19, insert "and seasonal" after "temporary".

On page 64, line 20, strike out "program under section 216" and insert in lieu thereof "programs under sections 216 and 217".

On page 64, line 24, strike out "subsection (b)(2)" and insert in lieu thereof "subsections (b) (2) and (3)".

On page 65, line 2, insert "and seasonal" after "temporary".

On page 65, between lines 12 and 13, insert the following:

"(5) on the appropriate limit on the number of seasonal workers who may be imported into all agricultural regions in the United States at any given time under section 217.

"(6) on the need to continue, improve, or eliminate the seasonal agricultural worker program established under section 217.

On page 66, on lines 11 and 12, strike out "in consultation with the Vice Chairman" and inserting in lieu thereof "in accordance with rules agreed upon by the Commission".

On page 68, line 4, strike out "27 months" and insert in lieu thereof "39 months".

On page 104, lines 20 and 21, strike out "216 (added by section 122(c)" and insert in lieu thereof "217 (added by section 125(b)".

On page 104, line 24, strike out "Sec. 217." and insert in lieu thereof "Sec. 218.".

On page 112, line 22, strike out "section 217" and insert in lieu thereof "section 218".

On page 113, line 7, strike out "section 217" and insert in lieu thereof "section 218".

On page 113, line 15, strike out "section 217" and insert in lieu thereof "section 218".

On page 113, line 18, strike out "section 216 (added by section 122(f)" and insert in lieu thereof "section 217 (added by section 125(i)".

On page 113, between lines 19 and 20, strike out "Sec. 217." and insert in lieu thereof "Sec. 218.".

On page 114, line 9, strike out "paragraph (15)(0)" and insert in lieu thereof "paragraph (15)(P)".

On page 114, lines 22 and 23, strike out "paragraph (15)(0)" and insert in lieu thereof "paragraph (15)(P)".

On page 116, line 6, strike out "section 122(a)" and insert in lieu thereof "sections 122(a) and 125(b)".

On page 116, line 7, strike out "subparagraph (M)" and insert in lieu thereof "subparagraph (N)".

On page 116, line 8, strike out "subparagraph (N)" and insert in lieu thereof "subparagraph (O)".

On page 116, line 11, strike out "(O)(i)" and insert in lieu thereof "(P)(i)".

On page 121, line 10, strike out "section 217" and insert in lieu thereof "section 218".

SIMPSON AMENDMENT NO. 617

Mr. SIMPSON proposed an amendment to the bill S. 1200, supra; as follows:

On page 62, line 11, after "Senate" insert: "after consultation with the majority leader and the minority leader of the Senate".

On page 69, line 3, after "Senate" insert: "after consultation with the majority leader and the minority leader of the Senate".

SYMMS (AND OTHERS) AMENDMENT NO. 618

Mr. SYMMS (for himself, Mr. GOLDWATER, and Mr. TRIBLE) proposed an amendment to the bill S. 1200, supra; as follows:

At the appropriate place insert:

Notwithstanding any other provision of law or of this Act, no agency or instrument of the United States, or any corporation or other entity created by act of Congress shall extend any loan or other form of credit of whatever nature to any government or agency thereof, of any country in North America which allows access to its ports to any nuclear weapons delivery-capable Soviet naval vessel (except vessels in extremism) at any time after September 20, 1985.

NOTICES OF HEARINGS

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. ANDREWS. Mr. President, I would like to announce for the information of the public that the Select Committee on Indian Affairs will be holding a hearing on September 18, 1985, along with S. 1298, in Senate Russell Building, room 485, beginning at 9 a.m., on S. 1621, a bill to amend title 25, United States Code, relating to Indian education programs, and for other purposes. Those wishing additional information on this bill should contact Peter Taylor of the committee at 224-2251.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. McCLURE. Mr. President, I would like to announce for the information of the Senate and the public that there has been a change in the starting time of the full committee hearing scheduled before the Committee on Energy and Natural Resources, Tuesday, September 17, in room SD-366 in the Dirksen Senate Office Building in Washington, DC. The hearing will begin at 9:30 a.m. instead of 10 a.m.

This hearing will examine the impact of moratoria on Outer Continental Shelf leasing in Federal waters adjacent to the coastline of the State

of California. For further information, please contact Jeff Arnold at (202) 224-5205.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. McCLURE. Mr. President, I would like to announce for the information of the Senate and the public the scheduling of a public hearing before the Committee on Energy and Natural Resources to consider the nomination of Anthony G. Sousa, of Hawaii, to be a member of the Federal Energy Regulatory Commission for a term expiring October 20, 1988, and Donna R. Fitzpatrick, of the District of Columbia, to be an Assistant Secretary of Energy (Conservation and Renewable Energy).

The hearing will take place Thursday, October 3, 1985, 10 a.m. in room SD-366 of the Senate Dirksen Office Building in Washington, DC.

Those wishing to testify or who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, room SD-358, Dirksen Senate Office Building, Washington, DC 20510. For further information, please contact David Doane or Gerry Hardy at (202) 224-5305.

SUBCOMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that the Subcommittee on Energy Research and Development of the Committee on Energy and Nataural Resources has postponed the hearing it had scheduled for Wednesday, September 18, 1985, at 9:30 a.m. It will be rescheduled on a future date.

This was a hearing to receive testimony on S. 1517, a bill to amend the Low-Level Radioactive Waste Policy Act of 1980 to authorize continued financial and technical assistance of the Department of Energy to the regional low-level waste compact regions, and to revise the guidelines and procedures for the establishment and use of regional disposal facilities for low-level radioactive waste, and for other purposes. For further information, regarding this hearing, please contact Marilyn Meigs on the subcommittee staff at 202-224-4431.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. ROTH. Mr. President, the Senate Committee on Governmental Affairs will hold a hearing on the nomination of James C. Miller to be the Director of the Office of Management and Budget on Tuesday, September 24 at 10:30 a.m. in SD-342.

For further information, please contact Carol Fox at 224-4751.

ADDITIONAL STATEMENTS

NEW LEADERSHIP FROM CWA, AN OUTSTANDING "PUBLIC CITIZEN"

● Mr. PACKWOOD. Mr. President, shortly before Congress adjourned in August, the Communications Workers of America, the largest telecommunications union in the world, elected Morton Bahr to serve as its new president.

Although CWA is more than 47 years old, the union has had but three chief executives in its history. Its founding father, the late Joseph Anthony Beirne, served as president for more than 35 years. His successor, Glenn E. Watts, presided over the CWA for the last 11 years, until he retired voluntarily in mid-July.

On July 16, union delegates attending the CWA convention in San Francisco chose "Morty" Bahr to receive the mantle of leadership.

Mr. President, as the ranking member of the Senate Communications Subcommittee, I am well aware of the revolutionary changes that are taking place in the telecommunications industry. CWA members in Oregon and throughout the Nation are on the cutting edge of the dramatic technological breakthroughs that are altering our society.

In these times of change, CWA is fortunate to have chosen as its new leader a man who has the steadfastness and the vision to keep both feet on the ground while reaching for the stars.

Morton Bahr has established a reputation as an effective organizer, a competent administrator, and an astute participant in the political process.

Along a similar line, I am proud to have been allied with CWA during the last Congress in support of legislation to place a moratorium on the imposition of an access charge for telephone service. If that misguided proposal had been implemented, as first put forth by the Federal Communications Commission, it could have forced millions of consumers to give up their telephone.

Thanks in part to CWA's grassroots and Capitol Hill lobbying, the FCC modified its initial proposal. After a groundswell of public opinion, it became clear that Congress would not accept making telephone subscribers pay as much as double-digit amounts each month for the privilege of receiving a dial tone, regardless of the frequency of telephone use.

I am also pleased to have been of assistance in achieving the enactment of pension portability legislation which protected the net credited service rights of telephone company workers who changed employment subsequent to divestiture.

Mr. President, the CWA is a prime example of an outstanding "public citizen" in our pluralistic society, an effective organization that enhances the quality of life of all Americans.

At this time of leadership transition, I want to congratulate Morton Bahr on his election as president and wish him and CWA all the best in the coming years.●

COL. JAY P. SELLICK, 41 YEARS OF SERVICE TO THE U.S. ARMY AND HIS NATION

● Mr. SASSER. Mr. President, I rise today to honor a distinguished citizen from Tennessee who has spent 41 years in service to his country. He is Col. Jay P. Sellick.

On January 21, 1944, at the height of the greatest war in history, Jay Sellick enlisted in the U.S. Army. From that time, Jay Sellick rose through the enlisted ranks serving as an infantry platoon leader, an aviation officer, an aviation platoon leader, an adjutant, provost marshal, an assistant chief of staff, and command and general staff college instructor. Jay Sellick completed his career as commander of the 401st Military Police Camp with the rank of colonel.

On August 31, 1985, the Army lost one of its most selfless leaders when Col. Jay Sellick retired.

Colonel Sellick epitomized the concept of duty and devotion to his country. This is a man who was an active participant in projects even when not assigned to a unit. It is that spirit of duty that made this country great. Colonel Sellick's actions are living testimony to the tradition that made Tennessee the Volunteer State.

During his long career, Colonel Sellick witnessed many changes in the Armed Forces of this country, many were implemented due to his leadership. One of the primary areas where change has occurred due to his initiative is in the function of the military police.

In 1980, Colonel Sellick was the first U.S. Army Reserve-Troop Program unit officer awarded the honorary faculty award by the U.S. Army Military Police School. He is recognized throughout the Army as a leader and developer of doctrine covering military police activities, particularly those relating to enemy prisoner of war operations.

In closing, it is evident that Colonel Sellick's career in the Army can be summed up with the words spoken by General Douglas MacArthur at his farewell address to the cadets at West Point: "duty, honor, country."●

POOR AS DIRT

● Mr. GRASSLEY. Mr. President, I am pleased to bring to your attention

the lyrics and musical composition of Mike Butler, of Waterloo, IA.

For the last 6 years, this young man has made farming the topic of over 60 original songs. He seeks to establish an ever growing collection of compositions which portray farm society and which he refers to as farm music.

Mr. Butler's musical reflection of farm society and the concerns of farmers is perhaps best expressed in a recent lyric entitled "Poor as Dirt" which follows:

The lyrics follow:

"POOR AS DIRT"
(By Mike Butler)

Poor as dirt . . . that's how we used to be.
We had horses pullin plows. We had to live dirt cheap.
But now the tractor that I ride has all that horse power deep inside.
The work that I just did today. It used to take the month of May.
Through all those years of livin cheap.
I always thought I'd get to keep my dirt.
Poor as dirt . . . Poor as dirt . . . Poor as dirt.
This land is my land . . . I built this farm with my bare hands.
And to kick me off you're gonna have to find a better man.
Poor as dirt . . . take everything you need.
Just leave me poor as dirt . . . Poor as dirt . . . Poor as dirt.
Poor as dirt . . . that's how we lived our lives.
And as long as there was land to farm. We knew that we'd survive.
But now I'm into high finance. A man like me don't stand a chance.
I beat the floods and shook the drought. And now they come to run me out.
Through all those years of livin cheap.
I always thought I'd get to keep my dirt.
Poor as dirt . . . Poor as dirt . . . Poor as dirt.●

THE 1985 NATIONAL YOUTH OF THE YEAR

● Mr. PRYOR. Mr. President, next week, Elgin Clemons of Little Rock, AR, will compete as one of the five finalists for the 1985 National Youth of the Year Program, sponsored by the Boys Club of America and the Reader's Digest Foundation.

This 18-year-old youth will represent the Little Rock Boys Club, the State of Arkansas, and the southwestern region of Boys Clubs of America.

Recently, the Arkansas State Press News Service published an article about Elgin, which I would like to share with my colleagues, and I ask that it be printed in the RECORD.

I want to congratulate this outstanding young man and wish him well in the national competition.

The article follows:

LR TEEN TO REPRESENT SOUTHWEST IN BOYS CLUB NATIONAL YOUTH OF THE YEAR PROGRAM

Elgin R. Clemons, 18, a member of the William E. Thrasher Boys Club in Little Rock, AR, has been named one of five finalists in the 1985 National Youth of the Year program, sponsored by Boys Club of America and the Reader's Digest Foundation.

A resident of Little Rock, Clemons will represent the Southwest in the national finals in Washington, D.C., September 16-18. The National Youth of the Year will be installed by President Ronald Reagan, Honorary Chairman of Boys Club of America, at a White House ceremony on Wednesday, September 18.

"The Thrasher Boys Club came into my life at a time when I most needed it," Clemons said.●

ACHIEVEMENT IN VOLUNTARISM PROGRAM

● Mr. PRYOR. Mr. President, on September 17, 1985, the U.S. Department of Agriculture, the U.S. Department of Education, the Farmers Home Administration, and the Future Farmers of America will honor its winners in the annual Achievement in Voluntarism Program. One of those recipients is an Arkansas native, Keith Anthony Marshall of Lake City, AR.

Keith was instrumental in securing improvements to the city park in Lake City. He attended city council meetings at which he presented plans and a proposed budget for improvements to the park. Under this young man's supervision, the local FFA chapter constructed a full size basketball court, goals, and bleachers, as well as landscaping the existing park.

Perhaps his accomplishments are best summed up by Arkansas Public Service Commission member and former Lake City mayor Pat Qualls, whose letter I ask to have printed in the RECORD.

I commend this young man for his hard work and dedication to his community. He is a fine example of the American spirit of voluntarism.

The letter follows:

ARKANSAS PUBLIC SERVICE COMMISSION,
Little Rock, April 30, 1985.

Re Keith Marshall

NATIONAL ACHIEVEMENT AND VOLUNTARISM,
Applicant Review Board,
Lake City, Arkansas.

GENTLEMEN: Before being appointed to the Arkansas Public Service Commission, I served as the Mayor of Lake City from 1979 to 1984. During 1982 and 1983 I had the opportunity and privilege of working with Keith Marshall on the BOAC Project.

Keith, as BOAC Chairman, attended city council meetings at which he presented the plans and budget for making improvements and additions to the city park. Under Keith's supervision, leadership and motivation the BOAC Team constructed a full size basketball court, goals, bleachers and also did landscaping and repair to the existing park.

While most high school boys were spending their free time after school and on the weekends playing and driving around in an automobile, Keith spent that time working at the park. He contributed hundreds of hours of work toward improving the park.

Keith is a fine outstanding young man. His character and morals are of the utmost quality. He is a gentleman in every sense of the word. I would unequivocally recommend Keith Marshall for the National Achievement and Voluntarism Award.

Cordially,

Patricia S. Qualls.●

ORDERS FOR MONDAY

ADJOURNMENT

Mr. SIMPSON. Mr. President, I ask unanimous consent that on completion of its business today the Senate stand in adjournment until 12 noon on Monday, September 16, 1985.

The PRESIDING OFFICER. Without objection, it is so ordered.

READING OF THE JOURNAL, RESOLUTIONS, AND CALL OF THE CALENDAR

Mr. SIMPSON. Mr. President, after conferring with the minority leader, I ask unanimous consent that when the Senate convenes on Monday, September 16, 1985, the reading of the Journal be dispensed with, no resolutions come over under the rule, and the call of the calendar be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF SENATOR PROXMIRE

Mr. SIMPSON. Mr. President, I ask unanimous consent that following the recognition of the two leaders under the standing order there be a special order in favor of the Senator from Wisconsin [Mr. PROXMIRE] for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. SIMPSON. Mr. President, following the special order just identified, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond the hour of 1 p.m., with statements limited therein to 5 minutes each and provided further that the morning hour be deemed to have expired.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. SIMPSON. Mr. President, following routine morning business, it will be the intention of the majority leader to resume consideration of S. 1200, the immigration reform issue. There will be no votes during Monday's session due to the Jewish holiday Rosh Hashanah.

Mr. President, I indicate that there will be rollcall votes on Tuesday, September 17, 1985.

ADJOURNMENT UNTIL MONDAY, SEPTEMBER 16, 1985

Mr. SIMPSON. Mr. President, I move, in accordance with the order

previously entered, that the Senate stand in adjournment until 12 noon, Monday, September 16, 1985.

The motion was agreed to; and the Senate, at 6:49 p.m., adjourned until Monday, September 16, 1985, at 12 noon.

CONFIRMATION

Executive nomination confirmed by the Senate September 13, 1985:

IN THE NAVY

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be admiral

Vice Adm. James A. Lyons, Jr., xxx-xx-x... xxx-x... 1110, U.S. Navy.

EXTENSIONS OF REMARKS

EARLY ASAT TEST: A BAD MISTAKE

HON. STEPHEN L. NEAL

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 13, 1985

Mr. NEAL. Mr. Speaker, the Reagan administration has announced plans to conduct an antisatellite [Asat] weapons test today against a live target in space. This is being done earlier than previously planned in order, the administration says, to demonstrate American resolve. However, we must ask whether this would be only an action of bravado in defiance of logic and contrary to American security interests.

In a recent article in the Washington Post, Adm. Noel Gayler pointed out that the United States is far more dependent on its military satellites than are the Soviets for keeping track of activities of adversaries and for directing its armed forces, conventional and nuclear. The Soviet Asat system is feeble and does not threaten important U.S. military satellites. A successful Asat test by the United States surely would cause the Soviets to end their unilateral moratorium on Asat testing, scuttling hopes for a bilateral Asat treaty. Moreover, the Soviets would most certainly follow the U.S. lead and develop their own weapons systems to close the only effective window through which to view Soviet activities.

Mr. Speaker, it would be a mistake to brand Admiral Gaylor's criticism of the administration's Asat Program as political sniping. The retired admiral is a distinguished military leader who previously held the position of commander-in-chief of the Pacific forces and was director of the National Security Agency during the Nixon administration.

At this point, I would like to call the admiral's article to the attention of my colleagues and urge them to consider his advice.

[From the Washington Post, Sept. 8, 1985]

REAGAN'S ASAT BOOMERANG

(By Noel Gayler)

The Reagan administration appears intent on testing our newest anti-satellite weapon soon. Many observers think this move is part of a new get-tough offensive on the part of the United States, to get a leg up on the Geneva arms-control negotiations and the Reagan-Gorbachev summit. It seems more likely, however, that the timing was determined by the weapon program itself—never mind the consequences.

It's time to take a look at the consequences of making space still another battle area. We are shooting ourselves, not in the foot, but a lot closer to the head. Of course, we are responding to the current Soviet effort, itself a possible response to our own earlier capability. This cycle is a formula for continuing escalation of the arms race indefinitely.

In the past, none of these weapons has had a capability against many of the satellites that are most important to us. But when the Soviets match us again, as they inevitably will, then even in the outermost reaches of space there will be no sanctuary. Few satellites, military or civilian, will be safe. Our own space shuttle will be at risk. So will the Soviet manned space stations.

The crux of the issue for us is that we Americans are far more dependent on the use of space—at least for military purposes—than the Soviets are. We depend greatly on space for military communications, for command and control, for navigation and precise position-finding. The high accuracy we assume for certain missiles systems in our nuclear deterrent is dependent on satellites.

Most important of all, we need satellites to know what is going on. The detailed pictures we can take from space afford an extraordinary overview of every activity within the vast Soviet land mass. Not at all incidentally, satellites can give us a similar overview of other areas of the world—in time, for example, to detect and avert preparations for South Africa's nuclear weapons testing in 1977.

Nor is this all. Satellites can "see" enormous portions of the earth's surface. Equipped with radar, or infrared detectors or listening receivers, they can supplement photographs to fill in the whole picture. From our intelligence perspective, we would be almost helpless without them, in this complex technological world.

From the standpoint of the Soviets, the situation is quite different. We are an open society. Vast amounts of military, political and industrial information are available to anyone—including the Soviets—for the price of subscription to a technical journal. Congressional testimony, official publications, contractors' brochures and newspaper stories are another rich lode of information.

The Soviets hardly need satellites to observe us. We "tell them all about it," so far as our own affairs are concerned. It's even difficult to imagine why they bother with satellite surveillance of us, except, possibly to attempt to track ships at sea—no easy task.

The development of anti-satellite weapons on both sides will, therefore, hurt us far more than it will hurt them.

We are not talking here about the administration's Strategic Defense Initiative (SDI) or "Star Wars" proposal. Although some of the technology is applicable to both ASAT and Star Wars, the problems posed in developing an anti-satellite system are infinitely simpler.

What are these "anti-satellite weapons?" The earliest were nuclear-tipped rockets, fired in the general direction of the target, and killing with a nuclear blast. Some others are simply satellites, maneuvered into a collision with the target satellite. The present Soviet ASAT is of this kind. Some are so-called space mines: companion satellites orbiting in close proximity to the target that can be shown up instantaneously on command, taking the victim with them. And some, far less developed, are laser or energy beams. The beams may be directed in space from one satellite against another, or from the ground to the target via a mirror in space.

The current Soviet anti-satellite weapon, which has been around for a while, is a dog. No doubt the Soviets can and will do better, if we reach no agreement with them. But an agreement that prevented the further development of satellite killers by either side would be so much in our own American interest that, if we can get it, we should grab it. The Soviets' operational capability is minimal. Ours, potentially much better, is not yet fully developed. Now is the time to make a deal.

Can we trust the Russians? How can we verify such an agreement, once it is signed? Here the situation looks pretty good. A treaty stopping anti-satellite development would be readily verifiable. It's hard to hide activity in space. There's a cold black uncluttered background that makes detection easy. Satellite orbits are predictable, and orbital changes characteristic of anti-satellite tests stand out like a sore thumb. The characteristic dependence on specialized ground support is another giveaway.

Thus the very nature of space makes it unlikely that the Soviets would be able to develop a weapon clandestinely and then test it in space without our knowing about it. Moreover, even if they did develop an anti-satellite weapon, they would be unable to take out all our satellites simultaneously. So "breakout" of a significant ASAT capability, after clandestine development—that is, to be able to mount a surprise attack on a whole group of satellites—is totally unlikely.

Even if it made any sense to test our anti-satellite weapon, to do so in advance of the Geneva talks makes no sense when we have so much to lose and so little, relatively, to gain. Testing now won't compel the Soviets to shape up at Geneva to our liking; rather they will raise the ante. Those who have had experience negotiating with the Soviets know this is by far the likeliest outcome of an attempt to twist their arm publicly.

Then there are the civilian uses of space, growing in importance everyday. From exploration of the far universe, to unlocking the secrets of energy and matter, to assessing the resources of earth, space has become indispensable. Weather reporting, television, communications—all are dependent on it.

The practitioners in space from hard-headed administrators like James S. Beggs, administrator of NASA, and Roald Sagdeev of the Soviet Space Institute, dreamers like Isaac Asimov and Carl Sagan, cosmonauts and astronauts alike have spoken eloquently about the future of mankind in the cosmos. Surely we cannot wish to put all this at risk.

Nor is space the exclusive property of the Soviets and ourselves, or of East and West or even of the developed nations. It is the inheritance of all mankind. No one of us has an exclusive right to control it, and no one of us is likely to own the effective means to control it, however hard and recklessly we may try.

But there is a worse concern. Just as atomic weapons, once our sole possession, spread first to the Soviets and then to a

---

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member of the Senate on the floor.

Boldface type indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

---

dozen nations, so will the capability to shoot down satellites. And with each player the risks will increase exponentially.

If we will look, we can see two roads into the future: one road perilous to ourselves and all others, the other leading to the peaceful use of space for all mankind.

If we will listen, we can hear the voices of sanity here, in Russia and around the world saying, "Put an end to the arms race in space".

And if we will stop—we and the Soviets—we can set an example that will keep space free of threat. Now is the time. Geneva is the place. Leadership is the key.

CONGRESSIONAL SALUTE TO GEORGE SHOICHI OKI

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 13, 1985

Mr. MATSUI. Mr. Speaker, I rise today to urge your special recognition of Mr. George Shoichi Oki, one of my most admired and well respected constituents who is being honored on August 23, 1985 as Agribusiness Person of the Year by the Sacramento Metropolitan Chamber of Commerce.

Throughout his life, George Oki has sought to serve the community in which he lives and in which he operates his business. A Sacramento native, he has resided here continuously, except for a 5-year period during World War II when his family was sent to an internment camp as part of the U.S. Government's policy against Americans of Japanese ancestry. After pursuing his education at the University of Oklahoma as a petroleum engineering major and after serving in the U.S. Air Force as a control tower operator, he returned to Sacramento at the end of the war with his brother, Richard, to help run the small family owned nursery business begun in 1907 by his father, Magoichi Oki.

As the result of many years of dedication and hard work, they built the Oki Nursery Company into one of the nation's 12 largest wholesale nursery industries. Today, the firm operates a massive 1-million-square-foot greenhouse complex at its Keifer Boulevard location in Sacramento and has expanded operations to San Jose, CA and to Portland, OR.

A strong community leader, George Oki serves as a board member on an impressive array of public service organizations and groups, including the Camellia Festival Association, the Matsuyama Sister City Corporation, the Sacramento Rotary Club, the Sumitomo Bank of Sacramento, the California Farm Bureau and the Sacramento Tree Foundation. Besides being a leader in the community and in the agricultural industry, George Oki has continued to demonstrate strong family ties. He and his wife, Joan, have been married 37 years and they have three children, George Samuel, Lorence and JoAnn and five grandchildren. The two sons are also executives in the family's nursery business.

On behalf of the people of Sacramento, I would like to take this opportunity to personally congratulate and commend George Oki on his outstanding contributions to our community and to his industry.

CONGRESSIONAL SALUTE TO JAPAN 85: THE PACIFIC CONNECTION

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 13, 1985

Mr. MATSUI. Mr. Speaker, Weinstock's department stores in California, Nevada and Utah are conducting an exciting 18-day celebration of Japanese culture that will enrich Americans of all ethnic backgrounds.

The festivity, entitled Japan 85: The Pacific Connection, will include exhibits, speeches, and displays all created to enhance American awareness of Japanese culture. Exciting pre-gala events will consist of a special performance of Madame Butterfly at the Community Center Theatre September 12 followed by a formal party, and Opening Day ceremonies September 13. Japan 85 will run from September 12 through September 29.

Mr. Speaker, Japan 85 is clearly full of fun and entertainment. Even more importantly, it serves to create an understanding and appreciation between different cultures; the crucial first step towards world peace.

Finally, Mr. Speaker, I would like to extend my warmest congratulations to Cheryl Nido Turpin, President and Chief Executive Officer of Weinstock's in Sacramento, California for the magnificent job she has done in organizing this enlightening and educational event.

CONGRESSIONAL SALUTE TO MAJ. GEN. DEWEY K.K. LOWE

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 13, 1985

Mr. MATSUI. Mr. Speaker, one of the most admired and respected citizens in the Sacramento metropolitan area, Major General Dewey K.K. Lowe, has been named deputy general manager of the Sacramento Municipal Utility District. This is an important event, Mr. Speaker, because it assures us that Dewey Lowe will remain with our community long after 1986, the year he was expected to retire from the military.

General Lowe is commander of McClellan Air Force Base's Air Logistics Center and his tenure has been marked by nothing less than efficiency and accomplishment. Over the past five years, he turned a base that was near closing into one of the top operations in the Air Force. In doing so, he improved the military readiness of our country and secured McClellan as a fixture in Sacramento's economy.

To many this comes as no surprise. Throughout his military career, Dewey Lowe has always demonstrated a high caliber of excellence—a fact clearly borne out by his many military decorations and assignments. He entered the U.S. Army Air Forces in 1943 and received his pilot wings and commission as a second lieutenant in February 1944. During service in World War II, the Korean War and the Vietnam War, Lowe's awards and decorations included the Distinguished Service Medal, the Legion of Merit, the Distinguished Flying Cross with two oak leaf clusters and the Bronze Star.

In short, Mr. Speaker, the directors of SMUD have selected a highly trained individual for this new position. He is a man respected by his colleagues in the military and loved by his friends and family in Sacramento. All of us wish him well.

CONGRESSIONAL SALUTE TO SACRAMENTO HISTORY CENTER

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 13, 1985

Mr. MATSUI. Mr. Speaker, I rise in honor of the newly constructed Sacramento History Center. This building not only houses countless artifacts from Sacramento's past, but as a reconstruction in red brick of the original 1854 City Hall and Waterworks Building, it also stands as a monument in its own right.

The grand opening of the Sacramento History Center coincides with the beginning of History Week in California's capital city. This nine-day celebration, sponsored by the County Historical Society, will include a native American exhibit and a special recognition of the California Almond Growers Exchange on their 75th anniversary.

The four galleries of the museum—Topomorphology, Community, Agricultural Technology, and the Eleanor McClatchy—feature a development of Sacramento as a diverse political and agricultural center of California. The creation of this museum will emphasize Sacramento's important place in the history of California and will help make local residents aware of their own history, which is so important in developing a community identity. Among the events scheduled for this opening week are live acts and plays from the early days of Sacramento, a display of classical agricultural machinery and a tribute to the late Eleanor McClatchy, a great Sacramento citizen and philanthropist.

Mr. Speaker, on this day I salute both those individuals who have contributed to the creation and development of the Sacramento History Center as well as those whom the History Center celebrates.

CONGRESSIONAL SALUTE TO MYRTLE OWEN

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 13, 1985

Mr. MATSUI. Mr. Speaker, I would like to take this opportunity to offer my congratulations and best wishes to Myrtle Owen, who is being honored on August 30, 1985, as Resident of the Year representing nursing facilities throughout the Sacramento metropolitan area.

Myrtle Owen, a resident of the Somerset Convalescent Hospital, is receiving the award from the Therapeutic Activity Social Coordinators who describe the 95-year-old lady as someone who enjoys each day to its fullest and as a warm, loving person who is growing old graciously.

It is indeed rare to find an individual who lives and enjoys life one day at a time. They exude a bright glow in their thoughts and actions that warms our hearts and makes us feel happy and privileged just to have known them. Myrtle Owen is one such person. Her vitality and spirit are sources of inspiration to all who know her.

As part of her recognition, she will have a long-cherished desire fulfilled with an air trip to San Francisco and a tour of Fisherman's Wharf arranged by the East Yolo Rotary Club.

On behalf of the citizens of our community, I would like to commend Myrtle Owen for her enthusiasm and her love of life and wish her many more years of joy and happiness.

CONGRESSIONAL SALUTE TO PAUL HAGAN

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 13, 1985

Mr. MATSUI. Mr. Speaker, I would like to take this opportunity to commend Paul Hagan, an outstanding member of the Rancho Cordova community who is retiring after an exemplary career spanning 25 years as chief administrator of the Cordova Recreation and Park District.

Paul's hard work and cheerful manner has earned him the admiration of friends and the respect of colleagues, associates and residents throughout the Rancho Cordova area.

Paul has a long and impressive history of civic and professional involvement and recognition as well. Among his honors are the Harris Fellowship, which is the Rotary Club's highest award for outstanding community service, a prestigious state fellowship from the California Park and Recreation Society as well as two professional citations from that organization in 1966 and 1973. In addition, he has served the community as president of the Rancho Cordova Area Chamber of Commerce, the Rancho Cordova Rotary Club, the Rancho Cordova chapter of the United Service Organization and as chairman of the Sacramento chapter of the American Red Cross. He also has served as a member of the board of directors of the Cordova Community Council.

Last November, Rancho Cordova demonstrated its deep respect and appreciation for Paul's many years of dedicated service by renaming the 61-acre Cordova Community Park as Hagan Community Park.

The Sacramento and Rancho Cordova areas could never fully acknowledge all of the outstanding contributions Paul Hagan has made to our community. I join with all of Paul's family and friends in saluting him on a job well done and in wishing him a most enjoyable retirement.

PASSING OF CHARLES SANDMAN

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, September 13, 1985

Mr. FLORIO. Mr. Speaker, Charles W. Sandman, Jr., served the people of the State of New Jersey for much of his life, which ended suddenly on August 26.

Our colleagues will recall his service in the House of Representatives from 1967 to 1974, a period just preceding my election to this body. But his record of service also included membership in the State legislature, superior court, and U.S. Army Air Corps in World War II.

A prominent figure in State politics, Mr. Sandman was the 1973 Republican nominee for Governor.

Our State has lost a dedicated and distinguished public servant. His passing was noted in a eulogy by the editors of the Record of Bergen County, and I would like to include it for the benefit of our colleagues.

The editorial follows:

CHARLES W. SANDMAN

The line on Charles Sandman was that you loved him or you hated him, but the truth was a lot more complicated. It was possible to dislike the style and substance of his campaigns for governor, or his blustering defense of President Nixon at congressional Watergate hearings, and still have affection for the cocky man with the broad grin and the gift for bouncing back from defeat. Mr. Sandman died of a stroke this week at the age of 63.

Ten years a state senator and eight years a member of Congress, Mr. Sandman was not one of your milquetoast Republicans. A resident of Cape May County, he spoke the language of rural New Jersey and he spoke it plain, in a raspy, often belligerent voice that could bristle with sarcasm and thunder with scorn. Robert Kennedy was "long-haired Bobby," draft-card burners were "treasonous," and former Gov. William Cahill, a longtime foe who was defeated by Mr. Sandman in the 1973 Republican primary, was nothing that would bear printing in a family newspaper.

The philosophy Mr. Sandman laid down in three campaigns for governor was straightforward. He was anti-abortion, anti-taxes, anti-crime, anti-big-government, anti-regional-zoning, and anti-school-busing. He was in favor of capital punishment and letting local communities do pretty much what they wanted. When he ran against Brendan Byrne in the general election of 1973, he warned that Mr. Byrne and the Democrats would "impose on our state an alien political philosophy and structure . . . allowing our state to fall into the hands of far-out leftists and wild theoreticians." Mr. Sandman lost 2-to-1 to Mr. Byrne, though his defeat had as much to do with Republican scandals in Trenton and Washington as with rejection of his philosophy. "If Abraham Lincoln had been in my place, he wouldn't have done any better," was his characteristically resilient view.

Six months later, more pugnacious than ever, he treated a nationwide television audience to the Sandman style during House Judiciary Committee impeachment hearings against President Nixon. For a time in the summer of 1974, he was one of Mr. Nixon's most visible defenders, a square-faced man with thick dark eyebrows who heaped scorn and ridicule on committee Democrats and accused them of offering no more than innuendo and circumstantial evidence. It didn't bother him that even some Republicans found his defense strident and ill-informed. "I have my disposition, and that's the only way I know how to act," he said. That fall, thanks largely to his defense of Mr. Nixon, he lost the congressional seat he had held since 1966.

So he moved on to the practice of law. "The impeachment was a disaster for me politically. But it was great from a business perspective," he said cheerfully, and he turned to rebuilding his career. When a stroke claimed him this week, he was a Superior Court judge, a job he was given by Governor Kean.

Almost everything about Mr. Sandman seemed larger than life. He had big hands and big shoulders, and he won a boxing scholarship to Temple University on the strength of highschool achievements as a middleweight Golden Gloves boxer. During World War II, after the bomber on which he was navigator was shot down over Pilsen, Czechoslovakia, he escaped from a German prison camp and made his way to Allied lines. He was a fighter, and you don't have to believe in all the things he fought for to mourn his passing.

OUR CONSTITUTION

HON. FRANK R. WOLF

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 13, 1985

Mr. WOLF. Mr. Speaker, Mrs. Mollie G. Pamplin, one of my constituents from Falls Church, VA, has written a patriotic prose selection entitled, "Our Constitution," which I would like to share with my colleagues. As we, as a nation, prepare to celebrate in 1987 the bicentennial of the U.S. Constitution, I hope Mrs. Pamplin's writing will cause each of us to reflect on our Constitution which has served as the foundation of our Nation for nearly 200 years.

OUR CONSTITUTION

(By Mollie G. Pamplin)

I speak for the American people,

I am the Constitution of the United States of America,

I was signed by thirty-nine men from twelve states on September 17, 1787.

My first ten amendments were ratified on December 15, 1791 and are known as the Bill of Rights. I have twenty-six amendments in all.

I have survived many momentous events. They have tested my strength and I have stood firm through them all.

Born of the American Revolution, I have lived through the War of 1812, the Civil War, the Spanish American War, World War I, World War II, the Korean Conflict and the Vietnam War.

I have seen forty Presidents, one who resigned from office, one who was appointed to office, four who were assassinated, four who had attempts made on their lives and three who died on our Independence Day. I have survived the great depression and several recessions. In good times and in bad I have stood strong.

I have given women the right to vote and guaranteed the civil rights of all citizens.

I guarantee your right to freedom of religion, to freedom of speech, freedom of the press, your right to peaceably assemble and the right to keep and bear arms.

How will you respond to your rights which I guarantee? Will you practice your religion but never press it upon others or deny them the right to practice theirs? Will you exercise your right to vote as the sacred privilege it is? Will you always be peaceable when you assemble? Will you keep and bear arms responsibly? Will you regard your right to free speech and a free press as a precious possession to be used and observed with Honor?

For more than two hundred years I have been the guardian of this Republic. Please protect me as you would your very life for I am your freedom.

GOVERNMENT EXCELLENCE

HON. RICHARD RAY

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 13, 1985

Mr. RAY. Mr. Speaker, in these days of billion dollar spending, it is rare that we hear of even one instance where the Government has done a good job. It is even more rare to hear that the Government—whether Federal, State or local—worked efficiently or effectively. That is why, when it happens in my district, I want to let you know about it.

Recently, the Department of Agriculture selected the Troup County Parks and Recreation Commission out of all the Southeast region of the United States to make a training film using the commission's ideas and methods of administering the Summer Lunch Program. They were selected because of their overall high quality management and work.

As a little bit of history, this program has been in existence for 14 years in Troup County. But in the years since the Troup County Parks and Recreational Commission took over its service, its organization has been called the best in the Southeast.

This commission is responsible for preparing approximately 800 lunches per day and delivers them to 13 different sites around the county so that low income children will have at least one balanced meal per day. The lunches are free and are critical to the nutritional needs of these children during their summer vacation.

This program—the Summer Food Service Program—is an extension of the School Lunch Program and serves the people of Troup County in an efficient and effective manner.

I want to congratulate and commend the Troup County Parks and Recreation Commisson for doing its part to make our Government a little better.

THE LOUISVILLE REDBIRDS

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Friday, September 13, 1985

Mr. MAZZOLI. Mr. Speaker, I bring to the attention of my colleagues the success of my hometown Louisville Redbirds baseball team which captured the American Association championship for the second time in a row.

The Redbirds, who are affiliated with the National League St. Louis Cardinals, moved to Louisville in 1982. Since then, A. Ray Smith, the team's owner as well as "chief cook, bottlewasher, and cheer leader," has made sure that summertime in the River City has never been so much fun.

The leadership, salesmanship, and, I should add, the showmanship of A. Ray Smith have made the Redbirds the biggest attendance draw in minor league baseball—and one of the biggest draws in all professional baseball.

Attendance the first year the Redbirds perched in Redbird stadium was 868,418. The Redbirds then set the all-time minor league attendance record of 1,052,438 in the 1983 season. While the Redbirds haven't broken their 1983 attendance record, the fans of our community—who cut their baseball eyeteeth back in the days when the Louisville Colonels, a Boston Red Sox farm club, were perennial Triple A champs—have come out in throngs to cheer their new "boys of summer."

Despite a rather shaky start, the 1985 Redbirds confounded the critics, won 12 of the last 24 games, and won the division title on the final night of the season. The Birds finished the season with a 74-68 record.

With Manager Jim Fregosi directing the action on the field, the Redbirds beat the Oklahoma 89'ers 4 games to 1 and brought the 1985 American Association pennant back to Louisville.

I speak for all citizens of our community in saying that we are all mighty proud of our Redbirds who are true winners in every sense of the word.

Hats off and a deep bow to Jim Fregosi and the team and to A. Ray Smith, Dan Ulmer, and all in the Redbirds' organization. Thanks for a great year!

HOW INSURED ARE YOUR SAVINGS?

HON. STAN LUNDINE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 13, 1985

Mr. LUNDINE. Mr. Speaker, I would like to bring to the attention of my colleagues an article which appeared in yesterday's Washington Post. The article, entitled "How Insured Are Your Savings?" by Hobart Rowen, addresses a serious problem which touches all Americans.

The subject of Mr. Rowen's column is the current system of Federal insurance for commercial and savings banks. The FDIC and FSLIC, which insure commercial institutions and thrifts respectively, are in need of reform. The safety and soundness of banks and thrift institutions is a fundamental principle upon which our banking system is based. But what about the soundness of the system that is designed to insure those institutions? As we are all aware, there have been a large number of bank and thrift failures over the last 2 years. The potential for disaster inherent in unstable banks was brought home earlier this year by the problems with State-insured institutions in Ohio and Maryland. While the Federal insurance funds are in much better shape than those two State funds, there is a lesson for us in these incidents.

While I do not endorse all of the solutions that are outlined in Mr. Rowen's article, I do think that they merit our attention. Action must be taken to strengthen the Federal deposit insurance funds. Mr. Rowen has written an important article, and those of us in Congress would do well to consider it carefully.

The article follows:

[From the Washington Post, Sept. 12, 1985]

HOW INSURED ARE YOUR SAVINGS?

(By Hobart Rowen)

On the radio the other day, a consumer adviser told listeners to invest in insured institutions. But if you can't, the voice said, make sure that the uninsured business is being conducted on a "sound basis."

Never mind the impracticality of the advice. (How could the average investor determine whether a business operation is sound?) The revealing underlying assumption was that if an institution is insured, one needn't question whether it's sound or unsound.

In a deregulated world, that psychology is precisely what encouraged many banks and savings and loan associations, competing for the consumer dollar, to take risks they would otherwise have found unacceptable.

Now there is a time bomb ticking away: the federal deposit insurance system may not be able to cope with potential runs on these institutions. There are hundreds of sick S&Ls shored up by the Federal Savings and Loan Insurance Corp. It provides depositors with federal insurance up to $100,000 in the same way that the Federal Deposit Insurance Corp. insures deposits at commercial banks.

On a realistic accounting basis, many S&Ls would in fact be bankrupt because of

their bad investments, notably in real estate. Because the cost of covering all potential losses far exceeds the FSLIC insurance fund of less than $4 billion, regulatory officials are talking of setting up a new agency empowered to borrow as much as $20 billion in private markets to augment the FSLIC's bail-out funds.

Another possible "solution" is a merger of the FSLIC into the FDIC, which would have the practical effect of wiping out the distinction between thrifts and banks. The FDIC is in a stronger position than the FSLIC. Nonetheless, it begins to appear that a merger would be a case of the halt aiding the blind.

A revealing new book, "The Gathering Crisis in Federal Deposit Insurance," by Ohio State University Prof. Edward J. Kane, says we have been lulled into thinking the FDIC and FSLIC provide a cheap, logical way of ensuring that the corner bank or S&L will be stable—or you can get your money back.

Kane has a gift for simple metaphor that brings the problem to life. He likens the fragility of the deposit-insurance system—one of the remaining legacies of the New Deal—to an old car that hasn't been well maintained. While still adequate for "light loads in flat country, it cannot be driven endlessly up and down steep interest-rate mountains without breaking down," he says.

"There is good reason to doubt either that the old car has many more interest-rate mountains left in it, or that it can be steered unharmed through the mine field of contemporary financial services competition."

At present, some 900 of the nation's 14,700 banks are on a "problem" list. That means, according to the FDIC rating system, that they run a significant risk of failure. The FSLIC doesn't even admit that it keeps a list, acknowledging only that 73 S&Ls disappeared last year, while 672 vanished in 1982 and 1983. The last time I mentioned these numbers, an FSLIC official protested to The Post that the public was being unnecessarily frightened by exaggerations.

Writes Kane: "The point that authorities don't want to face is that, however well the deposit-insurance system may have run in the past, it is headed for a bureaucratic breakdown. . . . Unless market discipline is reimposed on deposit institution risk-taking, the deposit-insurance bureaucracy will seize up at a most inopportune time."

Kane argues for dramatic changes—"trading in" the old deposit insurance "jalopy" before it cracks up with its passengers aboard. His "new model" would be one with reduced coverages and increased fees designed to force managers to make safer investments. He would gradually lower the basic insurance limit to $10,000 (then index it for inflation). Larger balances, in successive $10,000 slices, would be available at an increased insurance cost, to be paid for by the institutions or the depositors.

He believes Congress made a big mistake in 1980 when it boosted the insured account limit to $100,000. That was much more than the average householder needed, but in effect it enabled the banks to issue federally guaranteed debt that was in many ways superior to Treasury debt.

To be sure, a congressional resolution has reaffirmed that "the full faith and credit" of the federal government is behind the FDIC and FSLIC. That may guarantee savers against long-term losses, while the taxpayers pick up the check. But the resolution doesn't say just how it would work, or ensure that there won't be some panic while Congress acts to fulfill its promise.

Kane's proposals may be difficult for politicians to swallow. But his diagnosis of the problem rings true, and he makes a compelling case that the existing insurance system has been pushed beyond its capacity.

COMMODORE JOHN BARRY DAY 1985

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 13, 1985

Mr. BIAGGI. Mr. Speaker, as chairman of the bipartisan 112-member Ad Hoc Congressional Committee for Irish Affairs, I am pleased to join with the Ancient Order of Hibernians in commemorating a great Irish-American, Commodore John Barry. Under article XXIV of the constitution of the Ancient Order of Hibernians in America, today has been designated as "Commodore John Barry Day" in honor of the father of the American Navy.

While today we honor one distinguished Irish-American for his unique contributions to America—we are in fact honoring the entire Irish-American community for their countless contributions over our Nation's history.

John Barry was born in 1745 in County Wexford in Ireland. John Barry, as would be expected of someone affiliated with the Navy, took a love of the sea at the young age of 10. At the age of 30, he was commissioned as a captain in the Continental Navy of our Original Colonies. In fighting his adopted nation's Revolutionary War at sea, Commodore Barry defeated the British tender, the *Edward*, thus bringing to an American port, its first prize.

John Barry made invaluable contributions to America's successful quest for independence. Most noteworthy among his accomplishments was during the time when he commanded the frigate *Alliance* to victory in the last sea battle of the Revolutionary War. In 1793, George Washington called upon Barry to serve as the new U.S. Navy's first commissioned officer, thus earning him the honor we commemorate today—the father of the American Navy.

Irish-American organizations have been successful in achieving greater recognition for Commodore John Barry and other Irish-Americans who have made our Nation great. The Ancient Order of Hibernians is justifiably proud of the role it played in the 1981 law passed by Congress and signed by President Reagan honoring John Barry as the father of the American Navy.

On September 13, 1985, there are several noted ceremonies scheduled. One is at Constitution Park in Philadelphia, where Secretary of the Navy John Lehman will lay a wreath at the Barry statue there. Here in Washington, Deputy Chief of Naval Operations Thomas J. Hughes will join the AOH Commodore Barry Division of Washington, DC, in a noon wreath-laying ceremony.

I am proud to join in marking this important occasion honoring this important figure in American history. Let me also pay special tribute to two individuals with the Ancient Order of Hibernians who work to make Commodore Barry Day the important occasion it is. The first is the national president of the AOH, Joseph Roche; the second is Frank Duggan, who leads the Washington, DC, chapter of the AQH, and who gives hours of effort to the Barry Day celebration.

AN END TO APARTHEID

HON. DAVID DREIER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 13, 1985

Mr. DREIER of California. Mr. Speaker, I think it's time for the United States to speak with one voice on South Africa. It's easy to stand up and say you're opposed to apartheid. We all are. But it's not so easy to stop apartheid overnight.

The Government of South Africa has made some progress in stopping apartheid. For example, black trade unions are increasing, giving blacks more power to bargain to get fair wages and improved working conditions. An all-white electorate overwhelmingly approved a new South African Constitution giving more political power to other races, including the establishment of a multiracial, tricameral Parliament.

And, just in the past few days, the Botha government has made several new proposals. President Botha has offered to extend citizenship to all blacks. Additionally, it has been proposed to end the repugnant pass laws that require blacks to carry passes to travel around South Africa.

It should also be noted that the black share of national income in South Africa is nearly 50 percent. Black South Africans already constitute the largest black middle class in Africa.

So there has been progress. Clearly, it's not enough, but it is a step in the right direction. The debate within South Africa is no longer whether or not to end apartheid, but how soon and what should be done at what time.

What the U.S. Government should be doing is supporting evolution to prevent a revolution in South Africa. Congress cannot change the laws of South Africa. We've tried before with other countries and failed miserably. Mozambique, Zimbabwe, Angola, and Nicaragua are now all in the Communist or Marxist camp. And, in the case of Iran, our demand for reform led the country into the hands of an extreme religious fanatic.

The measures we adopt about South Africa should express our repugnance with apartheid, but not attempt to topple the South African Government. A strong, growing economy is more helpful to South African blacks than putting a stranglehold on their economy.

I believe the President's Executive order is the right step for the United States to take. But, the Executive order does not have to be the end if progress in South Africa to end apartheid is not continued. Congress can still enact H.R. 1460, the

South African Anti-Apartheid Act, at a later date. Or, Congress could also come up with a totally new bill to respond to the quickly changing conditions in South Africa.

But the Executive order is our chance to act and to act now. Even the leader of the 6-million member Zulu nation, the largest racial group in South Africa, said: "* * * of all the possible types of economic sanctions which could be applied to South Africa, the sanctions announced by President Reagan probably rank among the most responsible that a Western head of state could push for."

We shouldn't pass up this opportunity to speak with one voice on South Africa. President Botha was at least right about one thing when he said that South Africa had become the victim of an internal political dispute over who could impose the toughest sanctions. Let's end this dispute and give the Executive order the chance to work.